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Report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, in accordance with General Assembly resolution 70/286.

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* A/71/50.

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Report of an independent review on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic: "Taking action on sexual exploitation and abuse by peacekeepers"

Summary

Introduction

When peacekeepers exploit the vulnerability of the people they have been sent to protect, it is a fundamental betrayal of trust. When the international community fails to care for the victims or to hold the perpetrators to account, that betrayal is compounded.

In the spring of 2014, allegations came to light that international troops serving in a peacekeeping mission in the Central African Republic had sexually abused a number of young children in exchange for food or money (the "allegations"). The alleged perpetrators were largely from a French military force known as the Sangaris forces, which were operating as peacekeepers under authorization of the Security Council but not under United Nations command.

The manner in which United Nations agencies responded to the allegations was seriously flawed. The Head of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) failed to take any action to follow up on the allegations; he neither asked the Sangaris forces to institute measures to end the abuses nor directed that the children be removed to safe housing. He also failed to direct his staff to report the allegations at a higher level within the United Nations. Meanwhile, both the United Nations Children's Fund (UNICEF) and United Nations human rights staff in the Central African Republic failed to ensure that the children received adequate medical attention and humanitarian aid, and to take steps to protect other potential victims identified by the children who first raised the allegations.

Instead, information about the allegations was passed from desk to desk, inbox to inbox, across multiple United Nations offices, with no one willing to take responsibility to address the serious human rights violations. Indeed, even when the Government of France became aware of the allegations and requested the cooperation of United Nations staff in its investigation, these requests were met with resistance and became bogged down in formalities. Staff became overly concerned with whether the allegations had been improperly "leaked" to the French authorities, and focused on protocols rather than action. The welfare of the victims and the accountability of the perpetrators appeared to be an afterthought, if considered at all. Overall, the response of the United Nations was fragmented and bureaucratic, and failed to satisfy the core mandate of the United Nations to address human rights violations.

By examining these failures and recommending reforms to deter future incidents of sexual violence by peacekeepers, the present report provides an opportunity for the United Nations to chart a new course of action and to undertake meaningful organizational change. If the Secretary-General's zero-tolerance policy is to become a reality, the United Nations as a whole — including troop-contributing countries — must recognize that sexual abuse perpetrated by peacekeepers is not a mere disciplinary matter, but a violation of the victims' fundamental human rights and, in many cases, a violation of international humanitarian and criminal law. Regardless of whether the peacekeepers were acting under direct United Nations command, victims must be made the priority. In particular, the United Nations must recognize that sexual violence by peacekeepers triggers its human rights mandate to protect victims, investigate, report and follow up on human rights violations, and take measures to hold perpetrators accountable. In the absence of concrete action to address wrongdoing by the very persons sent to protect vulnerable populations, the credibility of the United Nations and the future of peacekeeping operations are in jeopardy.

An overview of the allegations

Between May and June 2014, a Human Rights Officer working for MINUSCA, together with local UNICEF staff, interviewed six young boys. The children reported that they had been subjected to sexual abuse by international peacekeeping troops or that they had witnessed other children being abused. In most cases, the alleged perpetrators were from the French Sangaris forces. In exchange, the children received small amounts of food or cash from the soldiers. All of the incidents occurred between December 2013 and June 2014, near the M'Poko camp for internally displaced persons, in Bangui. In some cases, the children also reported detailed information about the perpetrators, including names and certain distinguishing features such as tattoos, piercings and facial features.

The information reported by the children indicates that the violations were likely not isolated incidents. For example, some of the children described witnessing the rape of other child victims (who were not interviewed by the Human Rights Officer); others indicated that it was known that they could approach certain Sangaris soldiers for food, but would be compelled to submit to sexual abuse in exchange. In several cases, soldiers reportedly acknowledged or coordinated with each other, for example, by bringing a child onto the base past guards, where civilians were not authorized to be, or by calling out to children and instructing them to approach (indicating that the perpetrators did not fear being caught). In sum, if the allegations are substantiated by further investigation, they could potentially indicate the existence of a pattern of sexual violence against children by some peacekeeping forces in the Central African Republic.

Initial response of the United Nations to the allegations on the ground

Harmonizing United Nations policies applicable to sexual violence

As noted, the United Nations response to the allegations was far from adequate. In the view of the External Independent Review Panel on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, this was the result, in part, of a fundamental misperception by United Nations staff of the Organization's obligations in responding to sexual violence by peacekeepers.

Where allegations of sexual abuse by peacekeepers are reported to the United Nations, two distinct policy frameworks may apply. The first framework consists of policies adopted by the Secretary-General specifically to respond to sexual exploitation and abuse (SEA) by United Nations staff and related personnel, including troops under United Nations command. They do not apply to troops not under United Nations command. The Sangaris forces, for example, are not covered by the SEA policies. The focus of these policies is on misconduct as a disciplinary matter. They do not confer on the United Nations any authority to hold the perpetrator accountable; once the matter is handed over to the troop-contributing country, the United Nations has a limited role to play. Because troop-contributing countries too often fail to advise victims or the local civilian population about any measures they have taken to prosecute the perpetrators — or, indeed, if any measures have been taken at all — it often appears to victims that peacekeepers can act with impunity, regardless of their criminal conduct. This perception is damaging not only for the individual victim, but also to the relationship between the civilian population and the United Nations.

The second policy framework derives from the United Nations human rights mandate, which is rooted in the preamble of the Charter of the United Nations and operationalized through a number of Security Council resolutions and United Nations policies. Whereas the SEA policies are centred on the perpetrator, the human rights policies look at the victim first. The human rights policy framework becomes operative where the United Nations receives a report of a victim who has suffered a human rights violation, regardless of the affiliation of the perpetrator. In such cases, the United Nations has an obligation to investigate the incident, report on any violation, protect the victim and promote accountability. When viewed through the lens of the human rights policy framework, conflict-related sexual violence by peacekeepers is not merely a disciplinary matter, but a serious human rights violation.

In the course of the review, it became clear that, in the eyes of many United Nations staff, the human rights framework does not apply to allegations of sexual violence by peacekeepers. As a result, where there is an allegation that a peacekeeper not operating under United Nations command has sexually assaulted a civilian (and the SEA policies do not apply), some United Nations staff take the view that the United Nations has no obligation, or indeed authority, to address the reported sexual violence. In the Panel's view, this is a fundamental misperception and ignores the fact that the United Nations human rights policy framework continues to apply, whether or not the SEA policies are also applicable. To address this ambiguity, the United Nations must harmonize the SEA and human rights policy frameworks to make clear that the United Nations has an obligation to respond to allegations of sexual violence by peacekeepers in a meaningful way, regardless of whether the peacekeepers are operating under United Nations command. This is particularly appropriate given the Organization's recent reaffirmation of its human rights mandate in its Human Rights up Front initiative. Indeed, for victims of sexual violence, it is immaterial whether the perpetrator was wearing a blue helmet or not. In either case, there has been a betrayal of trust by the very person who has been authorized by the United Nations to protect civilians.

Investigation, reporting and follow-up

When the United Nations receives a report of a human rights violation, it has a duty under its human rights policy framework to investigate, report and follow up on those violations. These are interrelated obligations which are ultimately aimed at ensuring that the United Nations not only monitors human rights violations, but also takes active steps to intervene to end abuses and to hold perpetrators accountable.

In the Central African Republic, however, the United Nations failed to meet these obligations in a number of significant ways. For example, while UNICEF and the Human Rights and Justice Section of MINUSCA took steps to interview some of the children who had reported abuses, the Section failed to conduct a sufficiently in-depth investigation of the allegations. Given that the information reported by the children indicated the possibility of a broader pattern of sexual violence by some international peacekeeping troops, further investigation was warranted. The Section also failed to adequately report on the allegations. In particular, it made a deliberate decision not to report them with any urgency to the United Nations High Commissioner for Human Rights in Geneva. Rather than issuing an emergency report about the allegations to the High Commissioner — which would have been an appropriate step, given the seriousness of the allegations and the fact that the abuses appeared to be ongoing — the Section obscured the allegations by reporting them only in the context of broad, thematic reports that also included details of numerous other serious human rights violations by other international troops. Unfortunately, this strategy was effective and the reports, including the allegations they contained, went largely ignored within the United Nations until the matter received international media attention.

A number of other United Nations officials also failed to follow up appropriately. Despite having been advised about the allegations on numerous occasions between May and August 2014, for example, the Head of MINUSCA (the Special Representative of the Secretary-General for the Central African Republic) failed to take action. Similarly, the Africa Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva took no meaningful steps to follow up either with the Human Rights and Justice Section or with the Head of MINUSCA. The Special Representative of the Secretary-General for Children and Armed Conflict also failed to follow up with UNICEF to obtain details on the allegations, or with the French authorities to learn the outcome of their investigations and to assess whether they had taken appropriate measures to prevent further abuses. Despite the fact that the sexual abuse of children in the context of armed conflict falls at the core of her mandate, the Special Representative for Children and Armed Conflict took no steps to inform herself about what was being done by the United Nations to address the allegations until the spring of 2015, when the allegations were being reported by international media.

These repeated failures to respond to the allegations are, in the Panel's view, indicative of a broader problem of fragmentation of responsibility within the Organization, in which United Nations staff too often assumed that some other United Nations agency would take responsibility for addressing the violations. The end result was a gross institutional failure to respond to the allegations in a meaningful way.

Protection of victims and other civilians

One of the central mandates of MINUSCA is the protection of civilians, in particular women and children affected by armed conflict. Unfortunately, in the case of the allegations, the United Nations and its local partners failed to meet their obligation to protect the child victims. For example, at the conclusion of the interviews, UNICEF referred the children to a local non-governmental organization (NGO) partner for medical care and psychosocial support. While the local partner notified UNICEF that the children were being provided with medical care, it is now clear that the full extent of the services provided by the NGO at that time was a two-hour session in which a social worker, assisted by legal counsel, interviewed the children and filled out paperwork provided by UNICEF. The NGO made no assessment of the children's medical or security needs and did not contact the children in the following months, either to provide additional services or to assess their well-being.

While the services provided by the NGO were clearly inadequate, the failure of UNICEF to monitor the conduct of its partner NGO or to follow up with the children themselves is even more disturbing. Furthermore, neither UNICEF nor the Human Rights and Justice Section took any steps to locate the additional child victims who had been referred to in the course of the interviews to determine if they, too, were in need of protection services.

It was only in May 2015 — after international media outlets had begun reporting on the allegations and a year after the abuses had initially been brought to the attention of the United Nations — that UNICEF followed up with the local NGO. Only then did it locate the children and attend to their protection needs. This long delay in providing protection for the children, as well as the fact that it was apparently triggered only by international media attention, was, in the Panel's view, an abdication of the obligations of MINUSCA, the Human Rights and Justice Section, UNICEF and the Special Representative for Children and Armed Conflict under the United Nations protection mandate

Accountability

It is not enough for the United Nations to report on acts of sexual exploitation and abuse perpetrated by peacekeepers. It must actively seek to ensure that the perpetrators of such crimes are identified and prosecuted. In the Central African Republic, the Human Rights and Justice Section had a particular responsibility not only to investigate violations and protect individuals at risk, but also to follow up on human rights violations and assist in bringing perpetrators to justice. Unfortunately, neither the Special Representative for the Central African Republic nor the Head of the Section considered the United Nations to have a duty to pursue the accountability process. As a result, they took no steps to inform the Government of France of the allegations.

Moreover, United Nations agencies failed to adequately support legal proceedings initiated by the Government of France as a result of the allegations. For example, in response to the initial request by the Government for cooperation in its investigation, the Organization's internal services declined to recommend to the Secretary-General that he waive the Human Rights Officer's immunity in order to allow her to participate in the French legal proceedings. Exchanges between the Permanent Mission of France and the United Nations, including with their respective senior officials and legal offices, took weeks for each round of communication. Finally, in July 2015, almost a year after the investigators had arrived in the Central African Republic, the Secretary-General waived the Officer's immunity and agreed to transmit her unredacted interview notes (the "Sangaris notes") to the French authorities. This approach was unnecessarily prolonged and bureaucratic. A balance must be struck between the need for the United Nations to pursue its mission and the need for it to promote accountability.

Breakdown in United Nations leadership on the ground

Pursuant to its terms of reference, the External Independent Review Panel is required to assess whether there was any incident of abuse of authority by senior United Nations officials in connection with the allegations. The concept of abuse of authority requires that two criteria be met. First, there must have been an improper or wrongful use of the individual's position of authority; this may result from an omission to respond, an unreasonable decision or a violation of a fundamental obligation towards the Organization. Second, the improper use of authority must have resulted in a negative consequence for an individual or for the Organization.

In reviewing the United Nations response to the allegations on the ground, the Panel finds that the Head of the Human Rights and Justice Section and the Special Representative for the Central African Republic both committed an abuse of authority. As Head of MINUSCA and the most senior United Nations official in the Central African Republic, the Special Representative was the person most able to intervene with officials to hold the perpetrators accountable and to stop the abuses from recurring. Yet, despite being made aware of the allegations on a number of occasions, he took no steps to ensure that follow-up occurred. The security situation in the Central African Republic and the absence of clear guidelines with respect to troops not under United Nations command provide some context to the Special Representative's conduct. However, they do not justify his persistent failure to take action in the face of the seriousness of the allegations. Rather, his failure to take steps to prevent the sexual abuse of children or to ensure the accountability of the perpetrators was a total abdication of his responsibility to uphold human rights in the implementation of the MINUSCA mandate.

Similarly, the actions of the Head of the Human Rights and Justice Section show an outright disregard for his obligations as head of the human rights component of MINUSCA. For example, he neither considered that the protection of the children at risk was his responsibility nor acknowledged that the allegations brought to light what could potentially be systematic violations which required urgent action to halt further abuse, identify the perpetrators and ensure that they were held accountable. He also failed to follow up with other children who had allegedly been abused. Instead, he appears to have been preoccupied by the political sensitivity of the allegations. Indeed, he encouraged the Special Representative for the Central African Republic to keep the allegations quiet, rather than taking steps to ensure that the French authorities would halt any ongoing abuse. His deliberate strategy of including the allegations in broader thematic reports in order to obscure the abuses was directly contrary to his duty to protect civilians and to report, investigate and follow up on the violations.

The failure to take preventive steps and to intervene to stop the abuses exposed the children (and potentially other victims) to repeated assaults of the most egregious nature. Moreover, the failure of the Special Representative for the Central African Republic and the Head of the Human Rights and Justice Section to take appropriate action seriously jeopardized the collection of relevant evidence and the ability of France and the United Nations to identify the perpetrators. This, in turn, helped to perpetuate a culture of impunity and undermined the integrity of MINUSCA.

Response to the allegations by the United Nations in Geneva and New York

At the end of June 2014, the Human Rights Officer e-mailed a copy of the compilation of the Sangaris notes to OHCHR in Geneva. The notes were passed on to the Director of the Field Operations and Technical Cooperation Division, a senior official in OHCHR. Shortly thereafter, the Director advised the Permanent Mission of France to the United Nations Office and other international organizations in Geneva about the allegations and provided it with an unredacted copy of the Human Rights Officer's interview notes.

Seven months later, questions arose as to whether the Director of the Field Operations and Technical Cooperation Division had improperly leaked the Sangaris notes to the Government of France. At the request of the High Commissioner for Human Rights, the Deputy High Commissioner met with the Director and asked him to resign, which he declined to do. In March and April 2015, high-level meetings were held at the request of the High Commissioner and facilitated by the Chef de Cabinet of the Secretary-General. The participants in the meetings included the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Under-Secretary-General for Human Resources Management. Subsequent to these meetings, the High Commissioner requested that the Office of Internal Oversight Services (OIOS) open an investigation into the Director. He also requested that the Director be placed on administrative suspension. While the United Nations Dispute Tribunal subsequently lifted the suspension, the Director remains under investigation.

Pursuant to its terms of reference, the Panel must assess these events to determine if an abuse of authority occurred.

OHCHR staff are mandated to promote and protect human rights, particularly within vulnerable populations, and to intervene where abuses occur. OHCHR policies emphasize the importance of reporting and sharing information with national authorities as critical to promoting accountability. There is also a recognized practice among OHCHR staff in the field of conducting "quiet diplomacy" with local government officials in order to follow up on human rights violations. In the Panel's view, therefore, the Director of the Field Operations and Technical Cooperation Division did not act outside his scope of authority when he transmitted the Sangaris notes to the French authorities.

Further, while United Nations officials must certainly exercise great care before revealing confidential information about victims to local government authorities, such information may be communicated on a need-to-know basis. In the present case, had the fact that the identities of the victims were shared with French authorities been considered a risk to the children's safety, the United Nations would have taken urgent steps to protect the children when it became known in August 2014 that their identities had been disclosed. Instead, no steps whatsoever were taken to find the children, relocate them out of the M'Poko camp or assess their security needs until May 2015. It is reasonable, therefore, to assume that the United Nations agencies, units and offices did not, at the time, perceive that the transmission of the Sangaris notes put the children at serious risk of harm.

In the Panel's view, the High Commissioner demonstrated a single-minded determination to pursue an investigation into the Director's conduct. This was based on a preconception that the Director must have been motivated by some undisclosed personal interest when sharing the information with the French authorities. Further, in convening the two high-level meetings to discuss the Director's conduct in March and April 2015, the High Commissioner undoubtedly put other senior officials in a difficult position where their independence and the independence of their offices were at risk of being compromised. Ultimately, however, the High Commissioner's actions do not rise to the level of an abuse of authority. However questionable the High Commissioner's requests might have been, the officials whom he requested to take action were all of comparable rank to the High Commissioner and could be expected to act independently in carrying out their respective mandates.

Similarly, the Chef de Cabinet of the Secretary-General should have known that convening high-level officials to discuss the conduct of the Director of the Field Operations and Technical Cooperation Division would prompt speculation that a conspiracy was afoot. Further, she could and should have anticipated that the participation of the Under-Secretary-General for Internal Oversight Services in the meeting was likely to compromise the independence of the Under-Secretary-General as well as that of her office. It should also have been apparent to her that the participation of the Director of the Ethics Office in the meeting put her in a conflict of interest. Nevertheless, she appears not to have hesitated to facilitate the meeting, without warning any of the participants that such a meeting could be problematic. While the Chef de Cabinet's conduct was ill considered, however, in the Panel's view it does not rise to the level of an abuse of authority. Her intervention was limited to a request to attend a meeting. She did not participate in any decisions with respect to whether to investigate the Director for misconduct.

The participation of the Director of the Ethics Office and the Under-Secretary-General for Internal Oversight Services in the high-level meetings convened by the High Commissioner raise greater concern. While the purpose of the first meeting — to discuss the conduct of the Director of the Field Operations and Technical Cooperation Division — may not have been clear at the outset, it must have become clear as soon as the Director's conduct was discussed. At this point, it was incumbent on both the Director of the Ethics Office and the Under-Secretary-General for Internal Oversight Services to recuse themselves from the meetings. In the case of the Director, the role of her Office is (among other things) to administer the United Nations whistle-blower protection programme, including by providing confidential advice to employees. Her mandate is not to participate in discussions with respect to the discipline of employees. She should have maintained her independence both from senior management and from the investigative function of OIOS. Ultimately, however, the Panel concludes that the Director of the Ethics Office did not commit an abuse of authority. While her participation risked compromising the independence of her Office, ultimately she was not responsible for making any decisions in relation to the allegations of misconduct against the Director of the Field Operations and Technical Cooperation Division.

The Under-Secretary-General for Internal Oversight Services, however, not only attended the high-level meetings convened by the High Commissioner, but also initiated an investigation into the Director's conduct subsequent to those meetings. In particular, the Panel finds that the decision of the Under-Secretary-General to bypass the established protocols of her Office and to initiate an investigation into the Director of the Field Operations and Technical Cooperation Division on her own is cause for considerable concern. In assessing whether or not to advance the High Commissioner's complaint to a final investigation, the Under-Secretary General failed to undertake an independent process and did not ask obvious and important questions which should have caused her to consider whether an investigation was appropriate.

Ultimately, the Panel concludes that the Under-Secretary-General for Internal Oversight Services failed to preserve the appearance of objectivity and independence required to maintain the credibility of her Office and the investigation process. She failed to meet her duty to conduct a careful and methodical examination of the circumstances before initiating an investigation. The negative consequences for the Director of the Field Operations and Technical Cooperation Division are obvious. There is now an open investigation into his conduct, and he was placed on a temporary suspension (until the suspension was lifted by the United Nations Dispute Tribunal). Further, the Under-Secretary-General's conduct had consequences for internal interactions with staff, with regard to which there had already been struggles, and for the credibility and independence of her Office and of the Organization as a whole. Therefore, the Panel finds that she committed an abuse of authority.

The Panel also considered the conduct of the Under-Secretary-General for Peacekeeping Operations and a senior staff member in the Executive Office of the Secretary-General. In the Panel's view, while these individuals acted in ways that illustrated the Organization's failure to respond to allegations of serious human rights violations in a meaningful way, their actions did not amount to an abuse of authority.

Improving the United Nations response to sexual exploitation and abuse by peacekeepers

In reviewing the series of events and the underlying policies that unfolded after the allegations had come to light, the External Independent Review Panel makes the following findings and recommendations.

Refocus the lens on sexual violence by peacekeepers

The most significant step that the United Nations can take to improve its responses to allegations of sexual exploitation and abuse by peacekeepers is to acknowledge that such abuses are a form of conflict-related sexual violence that must be addressed under the United Nations human rights policies. To acknowledge and operationalize the obligations of the United Nations to protect victims, report, investigate and follow up on allegations and ensure that perpetrators are held accountable, the SEA and human rights policy frameworks must be harmonized under a unified policy framework.

Address the fragmentation of responsibility

One of the most glaring problems that the Panel observed in the course of the review was the tendency of United Nations staff to disown responsibility for dealing with sexual exploitation and abuse by peacekeeping forces. A system in which everyone is responsible for addressing sexual exploitation and abuse has produced a leadership vacuum in which no one is ultimately responsible or accountable. The Panel recommends the creation of a Coordination Unit to direct and coordinate the United Nations response to all allegations of conflict-related sexual violence, including those involving peacekeepers, whether they are under United Nations command or not. The Unit should be hosted in OHCHR under the oversight of the High Commissioner, given that the core mandate of OHCHR is to address human rights violations. The Coordination Unit should be supported by a working group which should include legal experts and representatives of troop-contributing countries. The working group should be tasked with developing standard operating procedures with a view to harmonizing United Nations policies on sexual exploitation and abuse, and promoting accountability.

Reporting of conflict-related sexual violence by peacekeepers should be immediate and mandatory

Allegations of sexual exploitation and abuse by international peacekeeping forces must be reported immediately. This is necessary both to alert responsible authorities within the United Nations and the relevant troop-contributing country, and to trigger the obligation of the United Nations to protect civilians, investigate allegations and follow up on human rights violations. Reporting the allegations to the Coordination Unit and to the responsible authorities within the United Nations is the first and most important step in addressing the problem of sexual violence by peacekeepers.

The need for a specialized investigation team

Investigations into allegations of sexual violence by peacekeepers must occur in a manner that respects the particular needs of the victims and witnesses and also preserves evidence for a subsequent judicial process. A specialized investigation team should be established, including experts with experience in investigating conflict-related sexual violence, especially such violence involving children. The team should be available for immediate deployment.

Reviewing policies on confidentiality

The principle of confidentiality is not an end unto itself, but rather a means to protect victims, witnesses and staff. Confidentiality should not be used as a shield to prevent United Nations staff from taking appropriate and necessary action to protect civilians and ensure accountability. Rather, the principle of confidentiality must be balanced against the equally important goals of prevention and accountability. The working group should review United Nations policies with a view to establishing such a balance.

The right of victims to a remedy

As a matter of principle, victims of conflict-related violence should be compensated. In an armed conflict, however, individual remedies are often illusory. The Panel supports the common trust fund proposed by the Secretary-General. The trust fund is not intended to compensate individual victims in the form of reparations, but assists in the provision of the specialized services required by victims of sexual violence. The trust fund should, however, be available to all victims of sexual violence by peacekeepers, whether the perpetrator is under United Nations command or not.

Revisiting the prosecution process

Structures currently in place for the criminal prosecution of peacekeepers who commit crimes of sexual violence are ineffective and inadequate. Agreements between the United Nations and troop-contributing countries allow the latter to retain exclusive jurisdiction to prosecute crimes perpetrated by their troops. This means that the United Nations, the host country and the victims have no recourse where the troop-contributing country chooses not to exercise its jurisdiction or engages in a flawed process. To address such circumstances, the United Nations should consider building on international models such as the one used by the North Atlantic Treaty Organization, which, in some cases, allows prosecution by the host country when the national Government of the perpetrator does not take action. This serves as a means to put pressure on the troop-contributing country to actively pursue accountability processes.

Increasing investigative and prosecutorial transparency

Even where prosecutions occur, the proceedings generally take place far from where the crimes were committed. As a result, victims and affected communities rarely have an opportunity to participate in judicial proceedings and are not apprised of the outcome. Mechanisms exist, however, to address issues of territorial jurisdiction in the context of international prosecutions and to improve the transparency of legal proceedings. *Commissions rogatoires* or mutual legal assistance agreements arrangements not only may make the collection of evidence in the host country easier (thereby furthering the ultimate goal of accountability), but also will create greater transparency for victims and local populations so that they can see that justice is being pursued. The United Nations and the troop-contributing countries can and should build on such mechanisms.

Immunity in the context of accountability

When a troop-contributing country initiates proceedings with a view to prosecuting sexual offences by one of its peacekeeping troops, the United Nations should facilitate these processes. In the Panel's view, immunity should not be a bar to United Nations officials and experts on mission when they are called to testify as witnesses to crimes of sexual violence. In particular, where the United Nations has itself referred the alleged incident of sexual violence to the responsible national authorities for investigation or prosecution, there should be a presumption that United Nations staff will cooperate in the legal proceedings. The Office of Legal Affairs should adopt an approach to immunity that presumes the cooperation and active participation of United Nations staff in accountability processes; immunity should stand only in circumstances in which the United Nations has determined that the disclosure of information by staff members could result in a security threat to the victims or witnesses, or in which the victim did not provide his or her informed consent to the disclosure of the information.

Stronger predeployment risk assessments, screenings and certifications

The United Nations utilizes several mechanisms to minimize the risk that troops will commit human rights violations. Unfortunately, these mechanisms are insufficient, because they are applied only in a piecemeal manner. The human rights due diligence policy, for example, applies only to troops who receive support from the United Nations. Moreover, there is currently no database that efficiently tracks all allegations or findings of sexual violence by peacekeepers, including both blue helmets and those not under United Nations command.

In the Panel's view, the screening measures imposed by the human rights due diligence policy should be integrated as minimum standards whenever peacekeepers are deployed, regardless of whether the troops are under direct United Nations command or are in receipt of United Nations support. The Human Rights Database housed by OHCHR should be used consistently to track all allegations and findings of human rights violations by peacekeepers. A comprehensive and up-to-date database is an essential precondition for the United Nations to be able to properly screen troops for deployment in a peacekeeping mission.

Strengthening the independence of United Nations offices

The United Nations has created several independent offices, such as OIOS and the Ethics Office, in order to improve fairness for United Nations staff. Yet, as illustrated by the meetings that took place between senior officials in March and April 2015 to discuss the conduct of the Director of the Field Operations and Technical Cooperation Division, the fundamental independence and objectivity of these offices remain in doubt. The Panel builds on the recommendation made by the Independent Audit Advisory Committee to develop guidelines and protocols to guide senior officials who head offices that require independence as part of their mandate. These guidelines should also address the conduct of other senior officials in the United Nations in their interactions with these offices.

Conclusion

Peacekeeping missions are often a measure of last resort to protect civilians in circumstances of extreme conflict and play a critical role in allowing both Governments and communities to rebuild and move forward. The importance of such work, the challenges inherent in peacekeeping and the personal sacrifices that individual peacekeepers make to overcome them should not be underestimated. Indeed, in the case of the Central African Republic, peacekeepers — including the French Sangaris forces — very likely averted the deaths of thousands of innocent civilians. Yet, the persistence of serious crimes against vulnerable local populations perpetrated by some of the very individuals charged with protecting them puts at risk the sustainability of peacekeeping missions in the longer term. Indeed, the fact that the problem persists despite several expert reports commissioned by the United Nations over the past 10 years serves only to exacerbate the perception that the United Nations is more concerned with rhetoric than with action.

If the United Nations and the troop-contributing countries are to rebuild the trust of victims, local civilian populations and the international community, deliberate, effective and immediate action is required. The first step is to acknowledge that sexual violence perpetrated by peacekeeping troops is not merely a disciplinary matter, but also a serious human rights violation, and may amount to a crime. This recognition, in turn, triggers a number of obligations of the United Nations and the troop-contributing countries to respond in a meaningful way to incidents of conflict-related sexual violence, regardless of whether the troops are operating under United Nations command. It is essential that all peacekeeping troops understand, even before deployment, that the sexual exploitation and abuse of local populations constitutes a human rights violation and may be met with criminal prosecution. When it receives reports of sexual violence by peacekeepers, the United Nations must take immediate action to stop the violations and hold the perpetrators accountable. Troop-contributing countries must take meaningful steps to bring perpetrators of sexual violence to justice in a manner that allows victims and the local community to see that troops cannot commit crimes with impunity. Victims also require immediate access to protection, including medical and psychosocial care. Above all, United Nations staff and agencies must end the bureaucratic cycle in which responsibility is fragmented and accountability is passed from one agency to another.

While this change will require a cultural shift both for the United Nations and for troop-contributing countries, such a shift is consistent with, and required by, the United Nations Human Rights up Front initiative. But the United Nations cannot do it alone. Troop-contributing countries play a critical role. Unless both the United Nations and the troop-contributing countries are truly committed to zero tolerance, this goal will remain illusory and the future of peacekeeping missions will be put in jeopardy.

Recommendations

Recommendation 1

Acknowledge that sexual exploitation and abuse by peacekeepers, whether or not the alleged perpetrator is under United Nations command, is a form of conflict-related sexual violence to be addressed under the United Nations human rights policies.

Recommendation 2

Create a Coordination Unit in OHCHR reporting directly to the United Nations High Commissioner for Human Rights to oversee and coordinate responses to conflict-related sexual violence, including:

- Monitoring, reporting and following up on allegations of sexual abuse;
- Analysing data with a view to tracking trends and practices for the purpose of improving prevention and accountability;
- Following up on the implementation of the Panel's recommendations.

Recommendation 3

Create a working group to support the Coordination Unit made up of experts (including specialists skilled in addressing sexual violence by international forces) and representatives of troop-contributing countries. The working group should:

- Develop a single policy harmonizing the SEA and human rights policies;
- Develop processes promoting criminal accountability for sexual violence.

Recommendation 4

Require mandatory and immediate reporting of all allegations of sexual violence to:

- The head of the human rights component in the field or mission, or the reporting officer;
- In the case of sexual violence against children, the child protection officer, as well as UNICEF and the Special Representative of the Secretary-General for Children and Armed Conflict; and, in the case of sexual violence against adults, the Special Representative of the Secretary-General on Sexual Violence in Conflict;
- The Coordination Unit.

Recommendation 5

Establish, under the authority of the Coordination Unit, a professional investigative team available for immediate deployment when conflict-related sexual violence by peacekeepers is reported.

Recommendation 6

Task the working group with reviewing United Nations policies dealing with confidentiality in order to establish a proper balance among informed consent, protection and accountability.

Recommendation 7

Establish a trust fund to provide specialized services to victims of conflict-related sexual violence.

Recommendation 8

Negotiate with troop-contributing countries provisions ensuring prosecution, including by granting host countries subsidiary jurisdiction to prosecute crimes of sexual violence by peacekeepers.

Recommendation 9

Negotiate the inclusion in agreements with troop-contributing countries of provisions ensuring transparency and cooperation in accountability processes.

Recommendation 10

Adopt an approach to immunity that presumes the cooperation and active participation of United Nations staff in accountability processes.

Recommendation 11

Negotiate with all troop-contributing countries provisions for screening troops that are minimally equivalent to the standards described in the human rights due diligence policy.

Recommendation 12

Maintain a comprehensive and up-to-date Human Rights Database hosted by OHCHR.

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Part I. Introduction

1. In the context of a country experiencing extreme conflict, the primary and most important purpose of a peacekeeping operation, whether authorized or mandated by the Security Council, is to protect the civilian population. Where peacekeepers exploit the vulnerability of the very people they have been sent to protect by sexually abusing members of the local population, it is a fundamental betrayal of trust. When the United Nations fails to address such crimes quickly and decisively, that betrayal is compounded and the important contributions of peacekeeping missions are undermined. Unfortunately, as detailed in the present report, this is precisely what occurred in the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) in the spring of 2014, as well as in the months that followed after the violations had come to light.

2. Sexual violence by international military forces acting in a peacekeeping capacity is not new; nor are United Nations inquiries into the matter. Since the Secretary-General declared a "zero-tolerance" policy in 2003,[1] the United Nations has commissioned several high-level reports on the problem[2] and has implemented numerous policies designed to prevent and punish sexual exploitation and abuse by those involved in United Nations operations.

3. Yet, the very same problems identified in the previous reports remain unaddressed and unabated: a culture of impunity in which some leaders turn a blind eye to sexual crimes by troops; a bureaucratic culture in which many are not willing to take responsibility for addressing the violations or to show leadership in investigating and prosecuting the criminal conduct; a disproportionate concern with protecting the image of the United Nations and its agencies rather than helping the victims; and routine and systematic delays at every stage of decision-making, even as the failure to act means that crimes may be recurring and that the chances of bringing the perpetrators to justice decrease day by day. The end result is inaction, which only feeds the perception that there is little risk or consequence for those who choose to exploit the most vulnerable members of society.

4. The institutional failure to respond immediately and effectively to incidents of sexual violence not only is damaging to victims, but also allows the actions of a few predatory individuals to taint the important and valuable work of peacekeepers as a whole, many of whom risk their lives to bring peace and stability to populations at risk. This seriously threatens the relationship of trust among civilian populations, troop-contributing countries, the United Nations and the international community, and undermines the sustainability of peacekeeping missions in the longer term.

5. If zero tolerance is to become a reality, the United Nations as a whole — including troop-contributing countries and other Member States — must treat the rape of children as what it is: a crime and a serious violation of human rights. It is

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[1] See ST/SGB/2003/13.

[2] See, for example, A/59/710, A/59/661, A/64/176, Thelma Awori, Catherine Lutz and Paban J. Thapa, "Final report: expert mission to evaluate risks to sexual exploitation and abuse prevention efforts in MINUSTAH, UNMIL, MONUSCO and UNMISS", 3 November 2013, and OIOS, "Evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations", evaluation report (assignment No. IED-15-001), 15 May 2015.

critical that the United Nations recognize its responsibility to address such human rights violations regardless of whether the peacekeepers were operating under United Nations command. Consistent with the United Nations Human Rights up Front initiative, policies must place the promotion and protection of human rights at the very heart of the Organization's mandate in its peacekeeping activities. Further, United Nations staff and agencies must pay more than mere lip service to such commitments; rather, they must give the policies real meaning by integrating the Organization's human rights mandate into their day-to-day operations.

6. More specifically, it is essential that all peacekeeping troops, even before deployment, be informed that the sexual exploitation and abuse of members of local populations constitutes a human rights violation and may be met with criminal prosecution. The United Nations must take immediate action when it receives reports of sexual violence by peacekeepers to stop the violations and hold the perpetrators accountable. Victims require immediate access to protection, including security, medical and psychosocial care and humanitarian assistance, and the opportunity to see and participate in legal proceedings aimed at bringing suspected perpetrators to justice. Above all, United Nations staff and agencies must end the bureaucratic cycle that passes responsibility and accountability from one agency to another. In the absence of such concrete action to address criminal wrongdoing by the very persons sent to protect vulnerable populations, the credibility of the United Nations and the future of peacekeeping operations are in jeopardy.

7. The subject of the present report includes not only allegations of egregious human rights violations perpetrated by peacekeepers, but also failures by some of the most senior leaders of the United Nations. The report provides an opportunity for the United Nations to chart a new course of action and undertake meaningful organizational and institutional changes. The critical role that peacekeepers are meant to play will be restored only when the United Nations takes concrete action to hold perpetrators of conflict-related sexual violence to account and provides necessary support to victims. Such action is essential if the United Nations is to live up to the goals of its Human Rights up Front initiative and integrate the primacy of human rights into its day-to-day operations. Zero tolerance cannot be achieved with zero action.

1. Overview of the allegations and the United Nations response

8. In the spring of 2014, allegations came to light that a number of children in the M'Poko camp for internally displaced persons had been sexually abused by members of international peacekeeping forces, mainly from the French Sangaris forces. As set out in greater detail below, these included allegations that children had been forced to submit to sexual acts in exchange for military food rations or small amounts of cash (the "allegations").

9. A Human Rights Officer temporarily deployed with MINUSCA, together with child protection officers of the United Nations Children's Fund (UNICEF), conducted interviews with six children who reported sexual abuses, and concluded that the allegations were credible. After she had completed the initial interviews, the Human Rights Officer informed several senior officers in the Sangaris forces that she had received information about sexual abuse carried out by Sangaris soldiers

near the M'Poko camp. She suggested that the Sangaris forces reinforce their patrols at the checkpoints in order to prevent any recurrence.[3]

10. At the end of June 2014, the Human Rights Officer sent a compilation of the notes of her interviews (the "Sangaris notes") to the Head of the Human Rights and Justice Section of MINUSCA and to the Peace Missions Support and Rapid Response Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva.

11. Around the same time, UNICEF referred the children to a local non-governmental organization (NGO) with which it had a global contract to provide legal and psychosocial support. However, the NGO only met with the children for a single two-hour "listening" session. It was only after international media outlets had begun to report on the incidents in May 2015 — more than a year after the original incidents of abuse had taken place — that UNICEF located the children, removed them to safe housing, provided them with medical care and assigned a social worker to work with them regularly.

12. At the end of July 2014, the Government of France was apprised of the allegations by the Special Representative of the Secretary-General for Children and Armed Conflict and by the Director of the Field Operations and Technical Cooperation Division of OHCHR. The Director also provided the Permanent Mission of France to the United Nations Office and other international organizations in Geneva with an unredacted copy of the Sangaris notes. Within days, French authorities arrived in Bangui to investigate the incident.

13. Several months after the Director of the Field Operations and Technical Cooperation Division had communicated the Sangaris notes to the Government of France, questions arose as to whether the Director had improperly leaked the information. The Director was asked to resign, which he declined to do. In March and April 2015, high-level meetings were held involving the United Nations High Commissioner for Human Rights, the Under-Secretary-General for Internal Oversight Services and the Director of the Ethics Office, among others, to discuss the Director's conduct in relation to his handling of the Sangaris notes. Eventually, the High Commissioner requested that an investigation be carried out into the Director's conduct and also that the Director be placed on administrative suspension. The Office of Internal Oversight Services (OIOS) decided to conduct an investigation, which is ongoing. The Director's suspension was lifted by the United Nations Dispute Tribunal in May 2015.

14. In May 2015, reports by international media and NGOs about both the sexual abuses and the Organization's treatment of the Director refocused the attention of the United Nations both on the children and on the broader problem of sexual exploitation and abuse by peacekeepers. In the wake of this public attention, on 22 June 2015 the Secretary-General convened the External Independent Review Panel on sexual exploitation and abuse by international peacekeeping forces in the Central African Republic, to conduct an independent external review of the response of the United Nations to the allegations. (The series of events leading up to the

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[3] E-mail from the Human Rights Officer to staff of the Office of the United Nations High Commissioner for Human Rights (OHCHR), 8 June 2015; French television France 2, *Viols en Centrafrique: l'armée savait-elle plus tôt qu'elle ne le dit?*, 2 October 2015.

appointment of the Panel are set out in greater detail in the chronology of events relating to the allegations, contained in annex I.)

2. The Panel's mandate

15. The Secretary-General requested the Panel to conduct an independent external review of the response of the United Nations to allegations of the sexual abuse of children by foreign military forces not under the command of the United Nations in the Central African Republic. Specifically, the Secretary-General requested the Panel to:[4]

- Provide a chronology of events related to the allegations;
- Review and assess the facts and circumstances in which the United Nations responded to the allegations, including any action that was taken or that should have been taken;
- Assess the procedures in place to communicate information about allegations of sexual exploitation and abuse to appropriate State or regional authorities for judicial or other responses;
- Assess the procedures in place at the time in the Central African Republic and in the United Nations under various mandates, including those of peacekeeping missions, special political missions, OHCHR and other relevant human rights entities, to prevent sexual exploitation and abuse from occurring, investigate such allegations, and support and protect the victims;
- Assess the actions taken by the United Nations in response to the allegations, including whether or not such actions complied with relevant procedures;
- Assess whether or not there was any incident of abuse of authority by senior officials in connection with the allegations, including in relation to the communication of the allegations to one or more third parties;
- Make recommendations as to what steps can be taken to ensure that the United Nations deals effectively and appropriately with future allegations of sexual exploitation and abuse, taking into consideration capacity, resources and other constraints;
- If the Panel determines that there are shortcomings in the content or implementation of procedures to address allegations of sexual exploitation and abuse against United Nations and related personnel, including military personnel under unified or operational United Nations control, make any recommendations that it deems appropriate.

16. The Panel's terms of reference are set out in annex II.

2.1. Methodology

17. To ensure the broadest possible participation in the review and the most complete information, the Secretary-General required all United Nations staff to

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[4] United Nations, "Secretary-General appoints independent review panel on United Nations response to allegations of sexual abuse by foreign military forces in Central African Republic", available from www.un.org/press/en/2015/sgsm16864.doc.htm.

cooperate with the Panel. At the Panel's request, the Deputy Secretary-General also publicized through the United Nations intranet and regional networks an invitation to all United Nations staff to provide voluntary confidential contributions directly to the Panel, together with a reminder that there would be no retaliation for cooperating with the review. As a result, numerous former and current United Nations staff volunteered to participate in the review.

18. Furthermore, the Panel invited the contribution of all Member States, a regional political organization and several NGOs which appeared to have a particular interest in, or had been directly or indirectly involved with, the incidents that had given rise to the allegations. The Panel alone decided whom to interview and interviewed most of the United Nations staff who had been involved in the incidents related to the allegations, from the most junior to the most senior.

19. In keeping with the Panel's mandate, which required the review to be conducted confidentially, and to encourage participation that was as free and candid as possible, the Panel received all contributions on a confidential basis. However, the Panel was mandated to provide a chronology of events relating to the allegations and to make findings with respect to possible abuse of authority by United Nations officials; these instructions necessarily required it to discuss certain events in some amount of detail. In fulfilling its mandate, the Panel sought to protect as much as possible the privacy interests of staff members. In order to balance these various considerations and to ensure that all aspects of the present report could be made public, the Panel chose not to use individual names or, unless the need for clarity demands them, specific titles. The Panel also maintained strict confidentiality regarding its source material, while recognizing that some internal United Nations documents are already in the public realm.

20. The Panel had unrestricted access to all personnel and documents it had determined were relevant to its review. On the order of the Secretary-General, the Panel was entitled to broad access to records and information, written or otherwise, from across the Organization, including any document or other information created or collected by OIOS (with the exception of material parts of investigations not directly related to the mandate). The Panel estimates that it received and reviewed thousands of documents in the course of the review, including internal e-mails, memorandums, reports and code cables. The Panel was assisted in its work by four independent consultants, all of whom had been selected to ensure that the review remained independent from the United Nations.[5]

21. The majority of the interviews were conducted during four weeks of visits to New York, Bangui and Geneva in July and August 2015. However, a large number of interviews were also conducted via teleconference up to October 2015 in order to ensure that geography did not impede full participation in the review. As a result, the Panel conducted more than 130 interviews and received a considerable number of written submissions. The Panel notes the willingness of many United Nations officials all over the world who reached out to the Panel and were willing to be forthright about the challenges they see in their everyday work dealing with sexual violence. The Panel was not asked to conduct an investigation into the allegations themselves and wanted to avoid exposing the children to the adverse effects of multiple interviews. It therefore did not ask to meet with the children.

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[5] James Arguin, Chief of Staff; I. Maxine Marcus, Senior Legal Investigator; Virginie Monchy, Legal Officer and Researcher; and Emma Phillips, Panel Counsel.

22. As provided for by the Panel's terms of reference, in cases in which the Panel makes adverse observations with regard to individuals, those individuals were provided with the opportunity to review the Panel's preliminary observations and to submit written comments. This gave rise, in some cases, to extensive exchanges aimed at ensuring fairness and transparency. These individuals were informed that their comments would be annexed to the present report. The comments of those who chose to respond to the Panel's observations are contained in annex III. In those instances in which individuals submitted more than one version of their comments to the Panel, only the most recent is included.

23. The Panel was initially asked to submit its report to the Secretary-General within 10 weeks of commencing the work. However, given the broad scope of the mandate and the extensive interviews and documentation that were required, as well as the need to ensure a fair process for those individuals against whom the Panel makes adverse observations, the timeline of the Panel was extended.

2.2. Terminology

24. In the present report, references to the "United Nations" or the "Organization" include both the Secretariat and its separately administered funds, programmes and agencies.

25. The term "sexual exploitation and abuse" is commonly used in United Nations policies and documents. The Panel has found, however, that the use of the acronym "SEA" tends to mask the seriousness of the underlying conduct, which in many cases is of a criminal nature. Therefore, the Panel refers to "SEA" only in relation to United Nations policies which themselves adopt this acronym.

26. "Conflict-related sexual violence" is understood in the present report as referring to incidents or patterns of sexual violence that include rape, forced prostitution or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g., political strife). They may also have a direct or indirect nexus with the conflict or political strife itself, for example, a temporal, geographical and/or causal link.[6]

27. The term "peacekeeper" is used broadly to include all international or regional troops who have been authorized or mandated by the Security Council to support peacekeeping missions. Similarly, the term "troop-contributing country" includes all countries that contribute troops to peacekeeping missions, whether or not the troops are placed under United Nations command.

28. Troops under United Nations command are also sometimes referred to as "blue helmets" because of this distinct feature of their uniform.

29. "Victim" is used broadly to refer to a person who has allegedly suffered sexual abuse, without regard to whether or not the allegation has actually been proven before a court of law.

30. A detailed list of acronyms is set out in annex IV.

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[6] The Panel adopts the definition of conflict-related sexual violence used by the United Nations system, which is aimed primarily at standardizing reporting through monitoring, analysis and reporting protocols. See A/66/657, para. 3; see also Security Council resolution 1960 (2010).

Part II. The allegations in context

31. In this part, the Panel reviews the history of the conflict in the Central African Republic, the broader problem of sexual exploitation and abuse by international peacekeeping forces, and the allegations themselves.

1. Overview of the conflict in the Central African Republic

32. In early 2013, after decades of underdevelopment and political instability, the Central African Republic experienced a major political crisis and breakdown of law and order when rebels known as the Séléka overthrew the Government. The subsequent formation of a self-defence militia, the anti-Balaka, intensified the hostilities. The conflict became increasingly sectarian and dramatically escalated at the beginning of December 2013, leading to widespread violence and human rights violations and sending hundreds of thousands of people fleeing.[7]

33. The resulting conflict affected nearly the entire population and threatened to spill over into the region. Thousands of people are believed to have been killed.[8] Some 2.7 million people — more than half of the population — are in dire need of protection, including, in many cases, basic humanitarian assistance.[9] Although the numbers fluctuate, United Nations agencies calculate that over 1.2 million people face serious food insecurity, 400,000 are internally displaced and more than 460,000 are refugees in neighbouring countries.[10] Hundreds of thousands of people fled to makeshift camps for displaced persons, including the M'Poko camp, protected by international troops. At the height of the conflict, approximately 120,000 people[11] were living in the M'Poko camp, and by May 2014 more than 57,000 remained.[12]

34. Children, who make up half of the population of the Central African Republic,[13] are bearing the brunt of the crisis.[14] They have been subjected to killings, mutilations and sexual violence and have been recruited by armed groups.[15] Many have been separated from their families, exacerbating their vulnerability.[16]

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[7] See www.un.org/en/peacekeeping/missions/minusca/background.shtml; see also S/2014/142, paras. 3 and 4.

[8] See www.un.org/en/peacekeeping/missions/minusca/background.shtml.

[9] Ibid.; see also Office of the United Nations High Commissioner for Refugees (UNHCR) country operations profile: Central African Republic, available from www.unhcr.org/pages/49e45c156.html; S/2015/576, para. 45; Office for the Coordination of Humanitarian Affairs Central African Republic database, available from www.unocha.org/car.

[10] See S/2015/576, para. 45; Office for the Coordination of Humanitarian Affairs, Central African Republic database, available from www.unocha.org/car; and United Nations Children's Fund (UNICEF), "Humanitarian action for children", 2015, available from www.unicef.org/appeals/files/2015_HAC_CAR_MYR_Final.pdf.

[11] Interview.

[12] UNHCR, "Emergency response for the Central African Republic situation: revised supplementary appeal", May 2014.

[13] UNICEF, "Children in crisis in the Central African Republic: a four-month progress report" (May 2014), p. 3.

[14] UNICEF, "Humanitarian action for children", 2015, available from http://www.unicef.org/appeals/files/2015_HAC_CAR_MYR_Final.pdf.

[15] UNICEF, "Children in crisis in the Central African Republic: a four-month progress report" (May 2014), p. 3.

[16] Ibid., p. 15.

35. Concerned about the growing security, humanitarian, human rights and political crisis in the Central African Republic, on 10 April 2014 the Security Council established MINUSCA, initially with up to 10,000 peacekeeping troops.[17] As set out in Council resolution 2149 (2014), the foremost priority of MINUSCA is the protection of civilians,[18] including "specific protection for women and children affected by armed conflict".[19]

36. MINUSCA subsumed the former United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA),[20] which itself had been preceded by a number of United Nations missions, dating back to 1998.[21] In parallel, the Security Council has also authorized, on several occasions, the deployment of various foreign military forces in the Central African Republic.[22] In particular, on 5 December 2013 the Council authorized the deployment of the African-led International Support Mission in the Central African Republic (MISCA)[23] and the French Sangaris forces[24] to quell the spiralling violence. The Sangaris forces were authorized to "take all necessary measures to support MISCA in the discharge of its mandate",[25] which included the protection of civilians.[26] Similarly, in its resolution 2149 (2014), the Council granted Sangaris forces the authorization to "use all necessary means to provide operational support to elements of MINUSCA".[27] MINUSCA formally subsumed MISCA on 15 September 2014 and continues its operations today.[28] By March 2014, 2,000 Sangaris forces personnel were deployed in the Central African Republic, including in Bangui.[29]

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[17] Security Council resolution 2149 (2014), paras. 18 and 20.

[18] Ibid., para. 30 (a) (i).

[19] Ibid., para. 30 (b) (ii).

[20] Ibid., para. 19. BINUCA was established pursuant to S/PRST/2009/5, S/PRST/2009/35 and Security Council resolutions 2031 (2011), 2088 (2013), 2121 (2013) and 2134 (2014).

[21] For example, the United Nations Mission in the Central African Republic (MINURCA) (see Security Council resolutions 1159 (1998) and 1271 (1999)); the United Nations Peacebuilding Support Office in the Central African Republic (BONUCA) (see S/1999/1235, S/2004/874, S/2005/758, S/2007/702, S/1999/1236, S/2000/944, S/2002/930, S/2003/890, S/2004/875, S/2005/759, S/2007/703, S/2008/809, S/PRST/2000/5, S/PRST/2001/25 and S/PRST/2006/47); and the United Nations Mission in the Central African Republic and Chad (MINURCAT) (see Security Council resolutions 1778 (2007), 1834 (2008), 1861 (2009), 1922 (2010) and 1923 (2010)).

[22] See Security Council resolutions 1778 (2007), para. 6 (a), and 2134 (2014), para. 43.

[23] The Mission for the Consolidation of Peace in the Central African Republic (MICOPAX) of the Economic Community of Central African States preceded the African-led International Support Mission in the Central African Republic (MISCA); see Security Council resolution 2127 (2013), paras. 28-33

[24] Security Council resolution 2127 (2013), para. 50; France, Ministry of Defence, *Operation Sangaris* (10 December 2013), available from www.defense.gouv.fr/actualites/international/operation-sangaris2/(language)/fre-FR#SearchText=sangaris#xtcr=1. Since the independence of the Central African Republic from France in 1960, French troops have regularly been deployed in the Central African Republic on the basis of bilateral defence agreements (for example, see Rapport No. 3308, No. 3309 and No. 3310. Assemblée Nationale française, 5 April 2011).

[25] Security Council resolution 2127 (2013), para. 50.

[26] Ibid., para. 28.

[27] Security Council resolution 2149 (2014), para. 47, extended by Security Council resolution 2217 (2015), para. 50.

[28] Security Council resolutions 2149 (2014), paras. 21 and 22, and 2217 (2015).

[29] See S/2014/142, para. 46.

37. Peacekeeping forces have played a critical role in stabilizing the Central African Republic, including by averting an even greater explosion of violence.[30] The accomplishments of the peacekeepers operating in the region, and the particular dangers they face, should not be minimized. However, these accomplishments are at risk of being overshadowed by serious human rights violations by some peacekeeping troops in the Central African Republic, including allegations of the sexual abuse of children. Unfortunately, allegations of sexual violence by peacekeepers are not new to the United Nations. The most recent allegations, and the manner in which the United Nations responded, must therefore be viewed in the broader context of the Organization's approach to the problem over the past decade. In particular, such context is necessary to understand why the problem of the sexual exploitation and abuse of local populations by peacekeepers has been characterized as "the most significant risk to United Nations peacekeeping missions"[31] and a threat to the long-term sustainability of peacekeeping missions.[32]

2. The problem of sexual abuse in peacekeeping missions

38. The United Nations defines sexual exploitation as "any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another". It defines sexual abuse as "the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions".[33]

39. United Nations peacekeepers have been implicated in sex scandals since the early 1990s, with cases reported in Bosnia and Herzegovina, Cambodia, the Democratic Republic of the Congo, Haiti, Liberia, South Sudan, Timor-Leste, Kosovo and West Africa,[34] as well as the recent cases in the Central African Republic in 2014 and 2015.

40. In 2003, after two decades of repeated incidents of sexual violence by peacekeepers, the Secretary-General issued a bulletin on special measures for protection from sexual exploitation and sexual abuse,[35] setting out extensive prohibitions regarding sexual conduct by United Nations staff and peacekeepers, including a prohibition on sexual relations with members of the local community, given the "inherently unequal power dynamics".[36] The bulletin also specifically prohibits sexual activity with children, "regardless of the age of majority or age of

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[30] See S/2014/928, p. 7.

[31] Thelma Awori, Catherine Lutz and Paban J. Thapa, "Final report: expert mission to evaluate risks to sexual exploitation and abuse prevention efforts in MINUSTAH, UNMIL, MONUSCO and UNMISS", 3 November 2013.

[32] See A/59/710, para. 10.

[33] See ST/SGB/2003/13, sect. 1.

[34] Jenna Stern, "Reducing sexual exploitation and abuse in United Nations peacekeeping: 10 years after the Zeid report", Civilians in Conflict Policy Brief, No. 1 (February 2015); Elizabeth F. Defeis, "United Nations peacekeepers and sexual abuse and exploitation: an end to impunity", *Washington University Global Studies Law Review*, vol. 7, No. 2 (2008), p. 187; and Thelma Awori, Catherine Lutz and Paban J. Thapa, "Final report: expert mission to evaluate risks to sexual exploitation and abuse prevention efforts in MINUSTAH, UNMIL, MONUSCO and UNMISS", 3 November 2013; see also A/69/779, A/68/756, A/67/766, A/66/699 and A/65/742.

[35] ST/SGB/2003/13.

[36] Ibid., para. 3.2 (d).

consent locally", as well as prohibiting prostitution in general.[37] This bulletin is generally referred to as the United Nations zero-tolerance policy.[38]

41. Unfortunately, the zero-tolerance policy has had little effect. The Secretary-General reported 79 cases of sexual exploitation and abuse in 2014, including 51 in the context of peacekeeping missions and special political missions.[39] Several cases from previous years are also still pending.[40] Such statistics are unlikely to paint an accurate picture of the scale and scope of sexual exploitation and abuse by peacekeepers, however, given the limited manner in which the United Nations tracks incidents of sexual violence by peacekeepers, as discussed below, and the likelihood that such incidents are vastly underreported.

42. The recurrence of allegations of sexual violence by peacekeeping forces has led the United Nations to conduct a number of high-level inquiries into the problem over the past decade.[41] The reports resulting from those inquiries contain careful and considered analyses of the problem of sexual exploitation and abuse in peacekeeping operations, as well as clear recommendations for change. In some cases, the Organization has made efforts to implement the recommendations. For example, pursuant to a recommendation made in the 2005 report of the Adviser to the Secretary-General on a comprehensive strategy to eliminate future sexual exploitation and abuse in United Nations peacekeeping operations ("Zeid report") (A/59/710), the United Nations clarified standards of conduct in relation to sexual exploitation and abuse for peacekeepers and created a Conduct and Discipline Unit in charge of conduct and discipline issues in field missions. The Unit is charged with formulating policies, conducting training and handling allegations of misconduct by peacekeepers operating under United Nations command.[42] Yet, critical recommendations have never been implemented. For example, the Zeid report identified the importance of creating a permanent professional investigative mechanism.[43] This recommendation was never adopted, which remains a serious gap in promoting accountability.

43. Despite the fact that the United Nations has had the benefit of these reports for some time, in substantive terms little has changed on the ground. As a result of the problems identified, the previous expert reports remain just as much at issue today. Worse, the culture of impunity has only become more entrenched, as both victims and perpetrators have little reason to believe that crimes will be punished in any meaningful way or that effective measures will be put in place to prevent future

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[37] Ibid, para. 3.2 (b) and (c).

[38] "Statement attributable to the Spokesperson for the Secretary-General on allegations of sexual exploitation and abuse by United Nations personnel in Sudan", 3 January 2007. Available from www.un.org/sg/STATEMENTS/index.asp?nid=2388.

[39] Those 51 incidents involved at least 57 victims and at least 62 alleged perpetrators; see A/69/779, paras. 4 and 6 and annex II.

[40] Data provided by the Department of Field Support to the Panel.

[41] See, for example, A/59/710, A/59/661, A/64/176, Thelma Awori, Catherine Lutz and Paban J. Thapa, "Final report: expert mission to evaluate risks to sexual exploitation and abuse prevention efforts in MINUSTAH, UNMIL, MONUSCO and UNMISS", 3 November 2013, and Office of Internal Oversight Services, "Evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations", evaluation report (assignment No. IED-15-001), 15 May 2015.

[42] See, for example, General Assembly resolution 59/300.

[43] See A/59/710, paras. 31 and 32.

abuses. It was in the context of this culture of impunity that the allegations that are the subject of the present report arose.

3. The allegations

44. The allegations first came to light when the head of a local NGO working in the M'Poko camp (the "M'Poko NGO") discovered, in the course of a mapping exercise with respect to internally displaced children, that some foreign military troops had subjected children to sexual acts in exchange for food or money. In May 2014, the allegations were reported to the Human Rights and Justice Section of MINUSCA and to the UNICEF office in Bangui, which quickly initiated an investigation. Between 19 May and 24 June 2014, a Human Rights Officer temporarily deployed to the Section interviewed, together with UNICEF child protection officers, six children who reported sexual abuse by Sangaris forces and other troop-contributing country troops. The Human Rights Officer compiled a summary of those interviews in a confidential document (the Sangaris notes).

45. Before examining the response of the United Nations to the allegations, it is critical to understand and acknowledge the seriousness of the crimes that are alleged to have been committed. They are heinous violations of the human rights of some of the most vulnerable people on earth — children in a camp for displaced persons in the midst of an armed conflict and a humanitarian crisis — by those mandated to protect them. Allegations of such a serious nature merited an immediate and meaningful response, in particular from the United Nations.

46. Although details of the allegations were the subject of numerous media reports, they also need to be set out in the present report to ensure that the allegations themselves and the response of the United Nations are fully understood. In describing the allegations, the Panel was mindful of the need to protect the security of the children and the integrity of the investigation.

3.1. Summary of allegations from the Sangaris notes

47. The information that came to light as a result of the Human Rights Officer's interviews between May and June 2014 is set out below.[44]

Interview 1

48. The Human Rights Officer conducted the first interview on 19 May 2014 with an 11-year-old boy. According to the Officer's notes, the boy said he had been playing near the exit of the M'Poko camp in January 2014 when a French Sangaris soldier had told him that he would give him biscuits if he would "lick his *bangala*" (a local term for penis). The child said he had been asked to wait until the soldier and his colleague finished their guard duty, and then to follow the soldier to his base. The Officer reported that, although children were not normally allowed on the base, the boy stated that after some discussion among the soldiers, he had been permitted entry. The child reported that the soldier had taken him to a sandbag shelter, where he had put on a condom and told the child to "suck his penis". The child reported that he had done as he had been asked, and in exchange the soldier

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[44] All confidential information pertaining both to the children and to the alleged perpetrators has been removed from the description of the Sangaris notes.

had given him food and a sum of money. When asked if he could identify the man, the child told the Officer that he could do so from a picture because of a distinguishing feature that the man had.[45]

Interview 2

49. The second interview was conducted on 20 May with a 9-year-old boy. The child reported that, sometime before 5 December 2013, a French soldier working at the checkpoint had called him, given him an individual combat food ration and shown him a pornographic video on his cell phone. The child stated that the soldier had then opened his trousers, showing him his erect penis, and had asked him to suck his *bangala* (penis). The child told the Human Rights Officer that they had been seen by another child, who had alerted some local delinquents. As a mob was forming, the soldier had told the child to run away, but the child had been caught and beaten. According to the child's statement, a local female sex worker[46] had intervened and told the soldier that it was not acceptable to use children this way; the child had then fled the scene. He told the Officer that the soldier had promised to pay him but had not done so that day because of the crowd; later, the soldier had given him two combat ration boxes before returning to France. The child told the Officer that he knew the soldier's name and could recognize him because of a distinguishing feature.[47]

50. The same child also told the Human Rights Officer that on a later occasion, in March 2014, another French soldier posted at the entrance to the airport had called him over for sex but, when the boy had refused, had asked him to find him a woman in exchange for rations. The child stated that the soldier had asked the guard on duty with him if he wanted a woman too, but he had declined. The child told the Officer that he had brought a local sex worker to the soldier, who had rewarded him with two combat ration boxes.[48]

Interview 3

51. The Human Rights Officer conducted a third interview on 5 June 2014[49] with a 9-year-old boy accompanied by his mother. According to the child's account, in late March 2014 he and a friend of the same age had left the M'Poko camp to look for food at the checkpoint at the entrance to the airport, where there were two soldiers from the Sangaris forces.[50] The Officer recorded the following account from the child:

> They asked us what we wanted. We answered that we were hungry. The short man told us to first suck his *bangala* (penis). I was afraid, but because I was hungry I accepted, and I entered first into the shack. My friend followed me. The short man who was upstairs on the big weapon came down and put his *bangala* out of his pants. The *bangala* of the thin one was for my friend. Their

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[45] Sangaris notes.

[46] The Panel notes that the use of the term "sex worker" should not be interpreted as suggesting voluntary, consensual prostitution.

[47] Sangaris notes.

[48] Ibid.

[49] An error in the Sangaris notes reflects the date of the interview as 5 May 2014. However, the Human Rights Officer later corrected this date (statement of March 2015).

[50] Sangaris notes.

> *bangala* were straight in front of us, at the level of our mouths. They were standing as if they were going to urinate. They told us to suck and we did it. None were wearing condoms. After some time, the short man urinated in my mouth and the other did it on the floor. At the end, they gave us three packs of *rasquette* [a military food ration] and some cash.[51]

Interview 4

52. The fourth interview was conducted on 17 June 2014, with a boy of 8 or 9 years of age. The boy reported that because he had been hungry, he had gone to see the French forces at the checkpoint at the airport entrance to ask for food. A soldier had allegedly told him to enter the bulletproof shelter and suck his penis in return for food. Because the child had friends who had done this already, he had known what he had to do. After the child had done as he was told, the soldier had given him some food. The boy said that he had done this several times between December 2013 and May 2014 when he had been hungry, each time for the same man, until one day an older child had seen him and told him that what he was doing was bad. The boy told the Human Rights Officer that the soldier had threatened to beat him if he told anyone what was happening.[52]

Interview 5

53. The Human Rights Officer conducted an interview on 18 June 2014 with a 13-year-old boy from the M'Poko camp. He told the Officer about several friends who regularly received food from the international forces in return for sex, and he identified several alleged perpetrators, some of whom were still in the Central African Republic at the time of the interview. The boy gave details about four different friends, all children, whom he had witnessed performing fellatio in return for money from French Sangaris soldiers. In all cases, he said that he either knew the name and location of the soldier or was able to give a detailed description of the perpetrator. He gave the Officer the locations of the incidents, all of which were at checkpoints near or at the airport. One of the occasions that the boy reported had occurred only a few days before the interview.[53]

Interview 6

54. The last interview was conducted on 24 June 2014 with an 11-year-old child, who told the Human Rights Officer that he had never performed sex for food but had seen two of his friends do so. The witness told the Officer that he had observed his friend, 9 or 10 years of age, with two Equatorial Guinean soldiers in mid-March 2014 at the MISCA military camp near the airport. While one had allegedly sexually abused the child, the other had stood guard; they had then taken turns.[54] The Officer recorded the boy saying that he had seen his friend performing fellatio on the soldiers and being anally raped.[55]

55. The boy also reported that in mid-March 2014, he had seen two Chadian soldiers from MISCA anally raping another friend, about 10 years old, while

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[51] Ibid.

[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] Ibid.

another Chadian soldier had stood by. The witness told the Human Rights Officer that he had heard his friend say to the soldiers, "Please stop — it hurts", and a soldier had answered that he would not pay if he stopped. The witness said that the next day, his friend had been limping and looked injured. The witness told the Officer that during the same month he had seen the same friend perform fellatio on a Sangaris soldier at the pedestrian checkpoint in exchange for food and money.[56]

3.2. Additional victims and allegations

56. UNICEF referred the children to a local NGO with which it had a partnership agreement for the provision of care.[57] (The role and conduct of UNICEF and the local NGO are discussed in greater detail below.) On 7 July 2014, the local NGO interviewed nine child victims.[58] Almost a year later, in May 2015, after international media had begun to draw attention to the allegations, 12 children were interviewed by the local NGO.[59] The local NGO reported that in the course of those interviews, some children had alleged further cases of sexual abuse by peacekeepers.[60] For example, the child in interview 6, who had initially reported to the Human Rights Officer that he had witnessed the oral and anal rape of his friends, now reported that he himself had been orally and anally raped.[61]

57. The Panel has been informed of several additional cases of alleged sexual violence by United Nations forces received by MINUSCA since January 2015, some involving more than one victim and many relating to child victims.[62] The Panel notes that the number of pending cases — in particular those involving sexual violence against children — is cause for serious concern.

58. The abuses reported by the children interviewed by the Human Rights Officer and the local NGO are of a very serious nature and fall within the definition of conflict-related sexual violence developed in the United Nations.[63] Rape and other forms of sexual violence against children in armed conflicts also constitute one of the six grave violations described in the Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict, issued in June 2014.[64] In addition, the procurement of sex from children in exchange for food or money may constitute grave violations of international human rights, international humanitarian law and international criminal law.[65]

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[56] Ibid.

[57] Interviews; agreement between UNICEF and its local partner in 2014.

[58] The number of children interviewed increased in July 2014 and again in May 2015 because the head of the M'Poko NGO brought additional children who had also reported abuse.

[59] Interview.

[60] Interview.

[61] Interview.

[62] Interview and documentation provided to the Panel by OHCHR.

[63] See A/66/657, para. 3.

[64] UNICEF, Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), p. 7.

[65] International Criminal Court, *Rome Statute of the International Criminal Court*, arts. 7 (1) (c), 7 (1) (g), 8 (2) (a) (ii) and (iii), 8 (2) (b) (xxii), 8 (2) (c) (i) and 8 (2) (e) (vi).

Part III. Initial response of the United Nations to the allegations on the ground

59. In this part, the Panel examines policies applicable to allegations of sexual violence by peacekeepers, their shortcomings and the response of the United Nations to the allegations on the ground.

1. Policies applicable to sexual exploitation and abuse

60. There are two distinct policy frameworks through which the United Nations can address allegations of sexual abuse and exploitation by peacekeepers. The first framework is composed of the numerous policies adopted by the Secretary-General to respond to sexual exploitation and abuse by United Nations staff, related personnel and troops under United Nations command. These policies are referred to as the "SEA policies" or "SEA policy framework".[66] The SEA policies relate mostly to the Organization's authority to take disciplinary action for misconduct and apply only to troops under United Nations command. In the case of the allegations, for example, the Sangaris forces are not under the direct command of MINUSCA and are therefore not covered by the SEA policies.

61. The second policy framework derives from the United Nations human rights mandate, which is rooted in the preamble of the Charter of the United Nations and the Organization's commitment to "reaffirm faith in fundamental human rights".[67] This commitment to the protection and promotion of human rights was reaffirmed in the Secretary-General's Human Rights up Front initiative, launched in 2013, which seeks to realize "a cultural change within the United Nations system, so that human rights and the protection of civilians are seen as a system-wide core responsibility".[68] The Organization's responsibility to uphold human rights is spelled out in greater detail in the mandate of the United Nations High Commissioner for Human Rights, to whom the General Assembly has entrusted the responsibility to "play an active role ... in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations".[69] The obligation to promote human rights, as well as to prevent violations of international human rights law, international humanitarian law and international criminal law, has been further integrated into United Nations peacekeeping missions through a number of legal instruments, as

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[66] These policies can be found in many instruments, one of the most important being the United Nations Policy on Accountability for Conduct and Discipline in Field Missions, Ref. 2015.10 (1 August 2015), which is a compendium of all policies on accountability, but also includes policies on sexual exploitation and abuse; other instruments include code cable 2329 from the Department of Peacekeeping Operations, the Department of Political Affairs, the Department of Field Support and OHCHR on guidance for response to allegations of serious human rights violations committed by international security forces, 13 October 2015.

[67] See Charter of the United Nations, preamble.

[68] United Nations, "Human Rights up Front initiative: a new initiative by the Secretary-General to improve United Nations action to safeguard human rights around the world", available from www.un.org/sg/rightsupfront/.

[69] General Assembly resolution 48/141, sect. 4 (f).

discussed below.[70] The United Nations human rights policy framework applies irrespective of the identity or affiliation of the perpetrator.

62. For victims of sexual violence, the distinction drawn between perpetrators, be they peacekeepers who fall under United Nations command or those who do not, is immaterial; the colour of the helmet does not alter or alleviate the harm that a victim suffers if a peacekeeper violates his or her human rights. In either case, there has been a betrayal of trust by the very person who has been authorized by the United Nations to protect civilians. Such a betrayal is damaging not only to the individual victim, but also to the relationship between the local population, the troop-contributing countries, the United Nations and the international community.

63. Given the Secretary-General's recent reaffirmation that human rights must and will play a central role in all of its activities,[71] it is only appropriate for the United Nations and the international community to harmonize the SEA and human rights policy frameworks and to develop a unified policy consistent with the Organization's human rights mandate. Indeed, through its Human Rights up Front initiative, the United Nations has not only reiterated its commitment to promoting respect for human rights as a "core purpose" of the United Nations,[72] but also committed itself to integrating this mandate "into the lifeblood of the United Nations" to more effectively prevent and respond to serious violations of international human rights and humanitarian law.[73] In the context of sexual violence by peacekeepers, the harmonization of the SEA and human rights policy frameworks is an important step towards the Organization's stated goal of placing the protection of human rights at the heart of United Nations strategies and operational activities.[74]

1.1. The sexual exploitation and abuse policy framework

64. Under the SEA policies, acts of sexual violence are considered to be instances of serious misconduct.[75] While there is some recognition in the SEA policies that sexual exploitation and abuse can constitute criminal offences under applicable domestic law,[76] the overarching focus of those policies is on misconduct as a disciplinary matter.[77]

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[70] Two important normative sources are: Department of Peacekeeping Operations/Department of Field Support Policy on Protection of Civilians in United Nations Peacekeeping, Ref. 2015.07 (1 April 2015) and Policy on Human Rights in United Nations Peace Operations and Political Missions, Ref. 2011.20 (1 September 2011) (Joint Policy).

[71] United Nations, "Human Rights up Front initiative: a new initiative by the Secretary-General to improve United Nations action to safeguard human rights around the world", available from www.un.org/sg/rightsupfront/; and United Nations News Centre, "Renewing our commitment to the peoples and purposes of the United Nations", 22 November 2013, available from www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2068#.

[72] United Nations, "Human Rights up Front", available from www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml.

[73] Ibid.

[74] Humanitarian Response, "Fact sheet: rights up front in the field", 20 August 2014.

[75] See, for example, "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), sect. E.

[76] Ibid., sect. E, p. 11; see also Policy on Accountability for Conduct and Discipline in Field Missions, Ref. 2015.10 (1 August 2015), paras. 10.3, 10.6, 12.1, 12.2, 12.6, 16.4 and 16.5.

[77] See, for example, "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011).

65. The United Nations SEA policy regime sets out procedures and undertakings applicable to both the United Nations and troop-contributing countries where allegations of sexual exploitation and abuse by troops under United Nations command arise. These include the following:

- The Head of Mission (through the Conduct and Discipline Unit) shall promptly inform the Under-Secretary-General for Field Support, the Under-Secretary-General for Peacekeeping Operations and the Under-Secretary-General for Internal Oversight Services, when applicable, of all allegations of sexual abuses by members of troop-contributing countries;[78]
- The United Nations shall notify the Government of the troop-contributing country about the allegations without delay where there is prima facie evidence that the incident occurred;[79]
- The United Nations, including the Head of Mission, must cooperate fully with appropriate authorities of the troop-contributing country to assist the troop-contributing country in the investigation as necessary (including by sharing documentation and information related to the allegations under investigation) and to facilitate the conduct of the investigation by the troop-contributing country, including with respect to identifying and interviewing witnesses;[80]
- Troop-contributing countries undertake and agree to inform the United Nations of any actions taken by the troop-contributing country to substantiate and address allegations, and the United Nations shall follow up with the troop-contributing country on all actions taken by the troop-contributing country.[81]

66. Two concerns arise out of the United Nations SEA policy framework. First, the SEA policies apply only to allegations against troops under United Nations command; they do not recognize any role for the United Nations in which sexual violence by troops not under United Nations command are reported. Second, the policies do not confer on the United Nations any authority to pursue the accountability of the perpetrator; once the matter has been handed over to the troop-contributing country, the United Nations has a limited role to play. Because there is too often a lack of transparency in the processes used by the troop-contributing country to address allegations (if it follows up on the allegations at all), victims and the local population may infer that nothing is done and that perpetrators are neither investigated nor prosecuted. As a result, there is a strong perception that perpetrators can act with impunity.

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[78] See ST/SGB/2003/13, paras. 4.2 and 4.6; and "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 10.7, 12.5 and 14.1.

[79] See "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 11.1 and 11.4; see also A/61/19 (Part III), annex, art. 7 quater, para. 2.

[80] See "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 13.5, 15.2 and 16.2; see also A/61/19 (Part III), annex, art. 7 quater, paras. 3 (a), 4 (b), 4 (c) and 4 (d).

[81] See "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 16.3 and 16.4; see also A/61/19 (Part III), annex, art. 7 sexiens, para. 1.

1.2. The human rights policy framework

67. The promotion and preservation of human rights is one of the foremost purposes of the United Nations, as established in Article 1 of the Charter of the United Nations[82] and reaffirmed in the Human Rights up Front initiative.[83] In the context of United Nations peacekeeping missions, the obligations to promote human rights and to prevent violations of international human rights law, international humanitarian law and international criminal law are articulated through a number of legal instruments. The September 2011 Policy on Human Rights in United Nations Peace Operations and Political Missions (the "Joint Policy"),[84] for example, specifically imposes on all United Nations missions the obligation to uphold international human rights law in the implementation of the mandates of peace operations and special political missions, even if that was not part of the original operational plan and design of the mission.[85] Further, the Special Committee on Peacekeeping Operations and its working group have also held that United Nations peacekeeping missions have an obligation under international human rights law and international humanitarian law to prevent acts of sexual exploitation and abuse by peacekeepers.[86]

68. Additional policy frameworks have also been developed to guide measures for prevention, protection, reporting, advocacy and intervention, accountability, justice and reparations in the context of conflict-related sexual violence,[87] violations against children in armed conflict[88] and the responsibility to protect civilians.[89]

69. In the case of MINUSCA, the Mission's mandate includes the obligation to protect civilians, including to "provide specific protection for women and children affected by armed conflict",[90] to "monitor, help investigate and report publicly and to the Security Council on violations of international humanitarian law and on abuses and violations of human rights committed throughout the Central African Republic"[91] and to "contribute to efforts to identify and prosecute perpetrators, and to prevent such violations and abuses".[92] It also calls upon MINUSCA to "monitor, help investigate and report specifically on violations and abuses committed against children as well as violations committed against women, including all forms of sexual violence in armed conflict, and to contribute to efforts to identify and prosecute perpetrators, and to prevent such violations and abuses".[93]

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[82] See Charter of the United Nations, arts. 1 (3) and 55 (c) and preamble.

[83] United Nations, "Human Rights up Front", available from www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtml.

[84] Joint Policy.

[85] Ibid., arts. 2 and 87.

[86] See A/59/19/Rev.1, part one, paras. 52 and 53. Paragraph 52 states, "Particularly with regard to the conduct of military, civilian police and civilian personnel in United Nations peacekeeping missions managed by the Department of Peacekeeping Operations, the Special Committee reiterates its insistence on the need for compliance with obligations under international human rights law and international humanitarian law, and underlines again that all acts of exploitation, including sexual exploitation, and all forms of abuse by military, civilian police and civilian personnel in United Nations peacekeeping missions managed by the Department are intolerable."

[87] See Security Council resolutions 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010).

[88] See, for example, Security Council resolutions 1612 (2005), 1882 (2009) and 1998 (2011).

[89] See, for example, Security Council resolutions 1674 (2006) and 1894 (2009).

[90] Security Council resolution 2149 (2014), para. 30 (a) (ii).

[91] Ibid., para. 30 (e) (i).

[92] Ibid.

[93] Ibid., para. 30 (e) (ii).

70. Further, in its resolution 2217 (2015), the Security Council extends the mandate of MINUSCA until April 2016[94] and reiterates its mandate to protect civilians[95] and to promote and protect human rights.[96] The Council also emphasizes "the imperative to hold accountable all perpetrators of violations of international humanitarian law and human rights violations and abuses, irrespective of their status or political affiliation, and reiterates that some of those acts may amount to crimes under the Rome Statute of the International Criminal Court".[97]

71. The effect of these resolutions is to operationalize the Organization's overarching mandate to promote and protect human rights by directing MINUSCA to take certain steps where allegations of human rights violations arise, including in fulfilment of its obligation to assist in holding perpetrators of sexual violence accountable, regardless of their affiliation.

72. In looking at the Organization's human rights policy framework, it is clear that the United Nations has the responsibility to address acts of sexual violence as human rights violations and potential violations of international humanitarian law and international criminal law. This includes the obligation to investigate the incidents, report both internally and publicly on the violations, protect the victims and work to hold the perpetrators accountable.

1.3. Harmonizing the sexual exploitation and abuse and human rights policy frameworks

73. While United Nations staff have generally perceived the SEA and human rights policy frameworks as parallel approaches running on two separate tracks, the reality is that in many instances both policy frameworks can and do apply. In order to address any ambiguity or confusion, therefore, the two frameworks should be harmonized and articulated in a unified policy. Even where the Organization's SEA policies are operative, the human rights framework continues to apply, imposing a number of obligations on the United Nations to respond to the allegation in a robust and meaningful way. Acknowledging the application of the human rights policy and accepting the need for harmonization may necessitate a change in culture and approach on the part of United Nations staff and troop-contributing countries.

74. Given the mandate of the United Nations High Commissioner for Human Rights to "coordinate the human rights promotion and protection activities throughout the United Nations system",[98] the High Commissioner and his Office are best placed to help translate the United Nations human rights framework into action, including the formulation and implementation of unified policies relating to reporting, investigation and follow-up on human rights violations, irrespective of the affiliation of the perpetrator.

75. Further, in order to ensure a proactive approach, the Secretary-General should create a Coordination Unit to deal with conflict-related sexual violence under the oversight of the High Commissioner, as described in part V below. The Coordination Unit will have an important role to play in ensuring that United

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[94] See Security Council resolution 2217 (2015), para. 22.

[95] Ibid., para. 32. See also para. 33, in which the Council mandates MINUSCA support for national and international justice and rule of law.

[96] See Security Council resolution 2217 (2015), para. 32 (e).

[97] Ibid., para. 15.

[98] See General Assembly resolution 48/141, sect. 4 (i).

Nations staff and troop-contributing countries carry out their obligations under the harmonized SEA and human rights policies. The Unit should oversee not only the harmonization of policies, but also the implementation of the recommendations included in the present report.

2. Investigation, reporting and follow-up

76. When the United Nations receives reports of conflict-related sexual violence, it has a duty to investigate, report and follow up on those violations.[99] These are interrelated obligations which are ultimately aimed at ensuring that the United Nations not only monitors human rights violations, but also takes active steps to intervene to end abuses and hold perpetrators accountable.

77. In the Central African Republic, however, after interviewing six children who had reported sexual abuses, the leadership in the Mission failed to take appropriate action to meet their obligations. In particular, United Nations officials failed to take any steps to investigate the allegations beyond the initial interviews, to report on the allegations with the urgency that the abuses merited or to follow up with the French authorities to address the violations. Instead, the approach of United Nations officials was to assume that because the alleged perpetrators were Sangaris soldiers not under United Nations command, the United Nations had a limited obligation to respond to the allegations, and that because the allegations were politically sensitive, staff should draw as little attention to them as possible.

2.1. The duty to investigate, report and follow up on allegations of conflict-related sexual violence

78. Where sexual abuse is alleged against troops not under United Nations command, the SEA policies are not applicable. As discussed above, however, the United Nations human rights mandate requires that the United Nations carry out the interrelated obligations of investigating the allegations; reporting on the allegations internally and, where appropriate, publicly; and following up on the allegations to prevent further abuses and to ensure that perpetrators are held accountable.

79. While the Head of Mission (in this case, the Special Representative of the Secretary-General for the Central African Republic) has an important role to play in carrying out these obligations, to a large extent these duties fall on OHCHR, which plays a central role in investigating and reporting on violations, regardless of the status or political affiliation of the perpetrator.[100] This role is usually carried out at the mission level by the human rights component of the mission, which is the representative of OHCHR in the field.[101] In the Central African Republic, for

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[99] See Joint Policy, paras. 53 and 54; Security Council resolution 1960 (2010), para. 8; S/2015/203, para. 100 (m); and United Nations News Centre, "Renewing our commitment to the peoples and purposes of the United Nations", 22 November 2013, available from www.un.org/apps/news/infocus/sgspeeches/statments_full.asp?statID=2068#.

[100] See Joint Policy, paras. 54 and 63-67; code cable GVA-0286 on mandate, role, functions and structure of the MINUSCA human rights component, 3 June 2014, para. 6; and "MINUSCA HRD monitoring and reporting strategy", Introduction, p. 1; see also "2014-2017 OHCHR country note for the Central African Republic", pp. 2 and 6.

[101] See Joint Policy, para. 41.

example, the Human Rights and Justice Section[102] has a particular responsibility for monitoring and investigating human rights abuses through the "active collection, verification, documentation and analysis of patterns of human rights violations" in order to "contribute to accountability through identification of alleged perpetrators".[103] (It should also be noted that the military component of MINUSCA also has an obligation to investigate violations of human rights in the Central African Republic. The July 2014 MINUSCA military strategic concept of operations, for example, sets out the obligations of the military component of MINUSCA with respect to promoting and protecting human rights, including contributing towards the monitoring and reporting on sexual violence in armed conflict and assisting in identifying perpetrators to prevent such violations and abuses.)[104]

80. Similarly, OHCHR staff, through the Human Rights and Justice Section, have an obligation to report on human rights violations and violations of international humanitarian and criminal law through both internal and public reports.[105] This reporting activity is an essential element of human rights monitoring and a strategic tool for the promotion of human rights.[106] In particular, the purpose of public reporting is to record and analyse trends and developments in a given human rights situation,[107] while the purpose of internal reports is to communicate information from the human rights component to the Head of Mission and to OHCHR in Geneva, for possible action.[108] Internal reports may include interview, incident or investigation or emergency reports.[109] In particular, emergency reports are designed to alert managers to an emerging situation and the need for urgent action, having regard to the seriousness of the reported violations, the political and security impact of the incident and the identity of the alleged perpetrators.[110] These emergency reports (also known as ad hoc or "spot" reports) allow the human rights field components to apprise OHCHR of urgent human rights issues.[111] Heads of human rights components have the discretion to share these reports with external actors at the field level on a "need-to-know" basis, subject to receiving appropriate assurances of confidentiality.[112] OHCHR policies make clear that reporting by the

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[102] The Human Rights and Justice Section has subsequently been reorganized as the Human Rights Section.

[103] Code cable GVA-0286, in particular para. 6.

[104] See "Military strategic concept of operations (ConOps) for MINUSCA", July 2014, sect. 30.

[105] See Joint Policy, paras. 63 and 64.

[106] See United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2001), chap. 13, p. 4.

[107] See Joint Policy, para. 65.

[108] Ibid., paras. 66 and 67; see also "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007), paras. 2 and 5.4.

[109] See "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007); and United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2001), chap. 13, pp. 12 and 16.

[110] See United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011), chap. 13, pp. 3 and 14.

[111] See "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007), paras. 2 and 3.4.

[112] See Joint Policy, para. 67; "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007), paras. 4.3 and 4.4; and "OHCHR standard operating procedure: FOTCD monthly reports from all field presences", 16 January 2013, para. 4.4.

human rights field component is a critical tool to ensure accountability where human rights violations have occurred.[113]

81. The obligation of the human rights component of a United Nations peacekeeping mission to both investigate and report on human rights violations is closely tied to its duty to "follow up" and intervene to stop the violations. For example, OHCHR policies make clear that OHCHR staff, including those in the field, have a duty to follow up on human rights violations, including by using information gathered to take corrective action.[114] According to OHCHR manuals, OHCHR staff should actively intervene to address human rights concerns by communicating information to the relevant government authorities, given that in many instances human rights violations can be addressed only by the government authorities themselves.[115] In some circumstances, for example, OHCHR policies contemplate that it may be appropriate for information to be discussed with Governments through their ambassadors, for example, where field officers find that it is not possible to adequately follow up on human rights violations in the country of operation.[116] Raising individual cases with national authorities can, in this sense, increase the pressure on Governments to improve the conduct of their troops.[117]

82. While the human rights policy framework applies to sexual violence perpetrated by peacekeepers, the SEA policies should not be overlooked where they also apply. Unlike the human rights framework, the SEA policies are specifically designed to address situations of sexual exploitation and abuse and include helpful guidance and procedures.[118] As discussed further in part V below, the Coordination Unit should be supported by a working group tasked with developing a unified policy applicable to all investigations of allegations of sexual violence by peacekeeping troops. This is an essential step in harmonizing the two policy frameworks.

2.2. Human Rights and Justice Section investigation

83. Upon learning of the possible abuses from the M'Poko NGO, the Human Rights and Justice Section and the UNICEF office in Bangui took appropriate action

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[113] See, for example, "OHCHR/Department of Peacekeeping/Department of Political Affairs policy directive on public reporting by human rights components of the United Nations peace operations" (1 July 2008), sect. B.

[114] See "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 366, para. 1.

[115] Ibid., p. 367, para. 10, and p. 377, para. 48; see also "Advocacy and intervention with the national authorities", chap. 31, pp. 4, 6 and 22; and "Engagement with national authorities and institutions", chap. 17, p. 5, in United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2001).

[116] See "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 377, para. 48; and "Engagement with national authorities and institutions", in United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2001), chap. 17, p. 12. See also Joint Policy, para. 59.

[117] "Advocacy and intervention with the national authorities", in United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2001), chap. 31, pp. 4 and 22.

[118] See, for example, "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 11.1, 11.2, 11.4, 12.1, 12.3, 13.1, 13.5, 13.6 and 15.2; see also sect. E.

in immediately authorizing their staff to interview the children.[119] The Human Rights Officer satisfied herself as to the reliability of the head of the M'Poko NGO and then arranged, together with UNICEF staff, for the interviews to be conducted in locations where the children could feel as secure as possible and in a manner that ensured confidentiality as much as the difficult circumstances permitted. The Officer used simple terminology that the children could understand. In addition, in all but one interview a UNICEF staff member spoke the children's mother tongue.

84. Consistent with OHCHR and UNICEF policies, the interviewers took steps to secure the informed consent of the children before conducting the interviews.[120] This was particularly challenging given that in most cases the children were unaccompanied minors who had been separated from their parents as a result of the conflict. However, the children were accompanied by the head of the M'Poko NGO, whom they called "Papa". In the case of the one child accompanied by his parent, the parent was consulted and involved in arranging the interview. The head of the M'Poko NGO was present at all the interviews, since the children all indicated that they wanted him to be there.[121] The children were asked whether they agreed to participate in the interviews and to disclose what had occurred so that United Nations staff could help to protect them and to make sure that it did not happen again.[122]

85. The Panel notes that, in investigations and judicial proceedings dealing with sexual violence, children must consent before participating in an inquiry and have the right to appropriate information to help them make decisions.[123] Given the sensitivities of obtaining informed consent from children — particularly a child who may have suffered multiple traumas as a result of the humanitarian crisis and the alleged sexual abuse — obtaining informed consent must be handled with great care, ideally by professionals who are experienced in child protection.[124] At the same time, in the circumstances of armed conflict it may not always be possible to observe the same formalities as in peacetime. In dealing with child victims and witnesses, the key concern is that consent must be obtained in a manner that is cognizant of, and sensitive to, their particular level of understanding, so that the broader goals of protection and prevention are achieved.

86. In the situation in the Central African Republic, the Panel considers that, given that the children were brought to the Human Rights Officer by the head of the M'Poko NGO to report the abuses that they had experienced, that the purpose of the interviews was expressed carefully to enable them to understand why they were being asked to share their experiences, and that they were accompanied at a

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[119] Interviews; statement of March 2015.

[120] See "Draft standard operating procedures on prevention and response to gender-based violence", 2014, pp. 17 and 22, applicable at the time of the events; and "Interviewing", in United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011), chap. 11, pp. 15 and 24; interviews.

[121] Statements of March 2015; Sangaris notes; interviews.

[122] Interview.

[123] See CRC/C/GC/12. Children also have the right to be informed of the rights available to them under the Convention on the Rights of the Child; see also Economic and Social Council resolution 2005/20 on the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, in particular paras. 8 (d) and 19.

[124] See World Health Organization, *Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies* (Geneva, 2007), in particular sect. 7.5.

minimum by an adult whom they trusted and who had come forward to act on their behalf and in their best interests, the interviews appear to have been conducted in accordance with the principles set out above. The standards for informed consent and for the use of the evidence for follow-up measures, including in potential criminal proceedings, therefore appear to have been met.

87. As can be seen, the determination of whether the requirements of informed consent are met requires that the interviewer assess several factors. In the circumstances of promoting accountability for human rights violations, informed consent is necessary because victims and witnesses may be called to participate in the accountability process and may be put at risk if their identities are disclosed. At the same time, the protection of victims and witnesses is ensured through both short-term measures such as confidentiality and long-term measures, including prevention through prosecution.

88. In order to provide clarity on this issue, the Coordination Unit should task its working group with establishing guidelines which will help determine, in the context of informed consent, the balance between confidentiality and the need to prevent further violations.

2.3. The failure to report on the allegations in an urgent manner

89. In May 2014, the Human Rights and Justice Section was asked by OHCHR in Geneva to prepare a report on allegations of human rights violations by MISCA troops in the Central African Republic to assist the Department of Peacekeeping Operations in screening troops for deployment by MINUSCA.[125] The MISCA troops comprised contingents from member States of the African Union, some of which had been the subject of allegations of serious human rights violations in the course of their deployment in the Central African Republic.[126] The Department was in the process of deciding which MISCA troops would be "rehatted" as blue helmets for further deployment by MINUSCA. The request to the Section was therefore made in an attempt to screen the troops for human rights violations. In response to Geneva's request, the Section prepared a report that detailed a number of allegations of violations of human rights by MISCA troops, including allegations of sexual exploitation and abuse.[127] Although the Sangaris forces were not part of MISCA, the Section, under the direction of its Head, also included information in the present report arising from the Human Rights Officer's first two interviews (the only interviews that she had conducted to date).[128]

90. The decision by the Human Rights and Justice Section to include the allegations in the present report, referred to as the preliminary findings, is, in the Panel's view, difficult to justify. The Sangaris forces were clearly not part of the MISCA forces and were not subject to any rehatting process, and therefore there was no reason to include information about the allegations in the document. Furthermore, in the Panel's view, the information that was in the hands of the Section by the end of the second interview was so egregious that it merited action in the form of an urgent stand-alone report. For example, the information known to the

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[125] E-mail from OHCHR to the Human Rights and Justice Section, 28 May 2014; e-mail between Human Rights and Justice Section staff, 29 May 2014.

[126] Preliminary findings; OHCHR, "Rehatting report".

[127] Preliminary findings.

[128] Ibid.

Section at that time was that the children had reported that they had been subjected to sexual abuse by Sangaris soldiers in exchange for rations or small amounts of money[129] and that one soldier had asked a child to procure a sex worker for him.[130] The reported information also indicated that such conduct was not uncommon (or at least that it was condoned by some other troops), given that soldiers were reported to have called out openly to children to procure sex.[131] Of particular concern was that one of the children had been brought onto the base and past a guard,[132] despite the fact that civilians were not authorized to enter the base. This information alone should have been sufficient to trigger an emergency report to the Special Representative of the Secretary-General and to OHCHR to draw urgent attention to the matter, rather than including the information in a broader thematic report about other troops. Instead of advising the Special Representative to report the allegations, however, the Section urged him to keep them confidential.[133] Therefore, while the Head of the Section did, in fact, report the allegations to his superiors, he did so in a very indirect manner, using a channel designed to avoid drawing attention.

91. Of even greater concern is that the Human Rights and Justice Section took no further steps to intervene to stop the violations or to hold the perpetrators accountable. In this case, the Head of the Section had a number of options open to him, including, first, asking the Special Representative of the Secretary-General to intervene by contacting the French authorities and relocating the children from the M'Poko camp; second, seeking the High Commissioner's intervention to contact the French authorities or engage with the Special Representative; or third, contacting the Sangaris forces himself. As noted, the obligation of OHCHR staff is not only to report on human rights violations, but also to use such information proactively to stop the violations and to seek accountability for the perpetrators of the abuses.

92. Indeed, unbeknown to the Head of the Human Rights and Justice Section, this is exactly the step that the Human Rights Officer took on her own initiative. At the end of May 2014, the Officer met informally with several senior Sangaris officials. Without revealing identifying information, she apprised them of the nature of the allegations and asked them to take preventive measures.[134] This informal communication of information is consistent with the obligation of human rights staff to follow up on human rights violations, as prescribed under OHCHR policies. The Head of the Section should have considered taking such action himself.

93. The failure of the Human Rights and Justice Section to follow up was exacerbated by the inaction of OHCHR in Geneva. On 30 May 2014, the Section forwarded the preliminary findings to the Central African Republic desk of OHCHR. The desk in turn forwarded the e-mail containing the report to the Africa Branch on the same day.[135] By that time, OHCHR had already submitted its own

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[129] Sangaris notes, child 1, child 2.

[130] Ibid., child 2.

[131] Ibid., child 1, child 2.

[132] Ibid., child 2.

[133] E-mail from the Human Rights and Justice Section to the Special Representative of the Secretary-General for the Central African Republic, 1 June 2014.

[134] E-mail between OHCHR staff, 8 June 2015.

[135] E-mail from the Central African Republic desk to the Africa Branch, 30 May 2014.

report to the Department of Peacekeeping Operations because the Section's report was late.[136] As a result, the preliminary findings went unnoticed.

94. Approximately one month later, at the end of June 2014, the Human Rights Officer submitted the Sangaris notes to the Head of the Human Rights and Justice Section. It was logical to expect that the Section would at that time prepare a specific report on the allegations for urgent transmittal to the Special Representative for the Central African Republic and to OHCHR in Geneva. Rather than preparing such a report, however, the Head of the Section again decided to obscure the allegations by placing them in a broader report that included a number of allegations of serious human rights abuses — such as killings and torture — by other international troops. In the Panel's view, the 17 July 2014 draft report was not sufficient to satisfy the obligation of the Section to report the allegations. As noted, by the end of June the Section had even more evidence that the abuses were not isolated allegations, but indicative of a systemic problem. The seriousness of the allegations merited a stand-alone report brought directly and urgently to the attention of the Special Representative for the Central African Republic and the High Commissioner in Geneva. This would have been consistent with the obligation of the Head of the Section to actively intervene to take steps to prevent further abuse, to identify those responsible and to investigate the allegations in order to promote accountability. Reporting the allegations to OHCHR was also important in the event that the Mission did not feel comfortable addressing them directly with the Sangaris forces commander; in such circumstances, the High Commissioner could have taken up the matter with French authorities in Geneva.[137]

95. Not only did the Human Rights and Justice Section not report the allegations directly to the Special Representative for the Central African Republic or the High Commissioner, but he never, in fact, finalized the 17 July 2014 draft report or submitted it to OHCHR. This was because in early August 2014 it became known that the Director of the Field Operations and Technical Cooperation Division had transmitted the Sangaris notes to the Government of France. At that point, the Head of the Human Rights and Justice Section determined that there was no need to take any further steps to report on the allegations, since the French authorities were already aware of the incidents.[138] He made this decision even though the 17 July 2014 report included serious allegations of human rights abuses by international forces other than the Sangaris forces. The Panel infers from this decision that the purpose of preparing the 17 July 2014 report was to disguise the allegations so that France was not singled out, and to draw as little attention as possible to the abuses. Unfortunately, this strategy was effective and the report, including the allegations that they contained, went largely ignored.

96. In the Panel's view, by following this course of conduct the Head of the Human Rights and Justice Section completely negated his duty to report on the allegations. The decision of the Head of the Section not to finalize the 17 July 2014 report was a failure of his obligation to follow up not only on the allegations

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[136] E-mail between OHCHR staff, 30 May 2014 (1.23 a.m.); statement to the Panel.

[137] See Joint Policy, para. 69; "Following up and seeking corrective action", p. 377, para. 48, "Engagement with national authorities and institutions", p. 12, in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2).

[138] E-mail from the Human Rights and Justice Section to OHCHR, 24 May 2015; OHCHR updated chronology of the clearance of the draft report, dated 3 June 2015; interview.

described in the Sangaris notes, but also on the other violations of human rights and international criminal law set out in the draft report.

97. Furthermore, the Panel is concerned that the Central African Republic desk in Geneva again failed to act on the information it had received from the Human Rights and Justice Section with respect to the allegations and other violations. Between May and July 2014, the desk was informed of the allegations on at least five occasions, including through the 17 July 2014 report.[139] To the Panel's knowledge, however, aside from a few cryptic words in an update on human rights developments dated 21 July 2014 and addressed by the Africa Branch to the Director of the Field Operations and Technical Cooperation Division,[140] the desk took no further steps to follow up either with the Section or with the Special Representative. Finally, probably in reaction to the French investigator's attempt to meet with Section staff, on 5 August 2014 the desk wrote an e-mail to the Head of the Section requesting him to ask the Special Representative to discuss the allegations with the High Commissioner.[141] In the Panel's view, this was a failure by the desk to respond and follow up in a timely manner to the serious allegations of the sexual abuse of children by peacekeepers.

98. OHCHR policies emphasize the importance of reporting as an integral aspect of follow-up. Unfortunately, however, there appears to have been a disconnect between these policies and the day-to-day actions of some staff on the ground. Rather than treating the duty to report human rights violations as part of an overall duty to intervene in order to address the violations, prevent future abuses and ensure accountability, Human Rights and Justice Section staff placed undue emphasis on documenting human rights violations. This was also the case for the Central African Republic desk, which, upon receiving the 17 July 2014 report, merely referred it to another team for editing, returned it to the Section and then allowed it to slip into oblivion. Passing on responsibilities and disowning duties appear to have been routine.

2.4. The failure to investigate the allegations further

99. After the Human Rights Officer had completed her short-term contract and departed from the Central African Republic, the Human Rights and Justice Section did not continue the investigation and UNICEF did not attempt to locate the additional children. This was despite numerous red flags in the information they had received to date:[142]

- Four of the six children interviewed identified other child victims, not all of whom were interviewed by the Human Rights Officer. Two reported that violations had occurred on several occasions. This information appears to indicate that the allegations were not isolated incidents;

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[139] On 13 and 30 May, 19 and 20 June and 17 July 2014 (e-mail from one Human Rights and Justice Section staff member to another, and to OHCHR, 13 May 2014; e-mails from the Human Rights and Justice Section to OHCHR, 30 May and 19 June 2014; e-mail between OHCHR staff, 20 June 2014; e-mail from the Human Rights and Justice Section to the Special Representative of the Secretary-General for the Central African Republic, copied to OHCHR staff, 17 July 2014; statement to the Panel).

[140] E-mail from the Africa Branch of OHCHR to the Director of the Field Operations and Technical Cooperation Division, 21 July 2014.

[141] E-mail from the Central African Republic desk to the Head of the Human Rights and Justice Section, 5 August 2014.

[142] Sangaris notes.

- Some of the children's statements indicate that it was known that they could approach certain Sangaris soldiers for food, and would be compelled to submit to sexual abuse in exchange;
- Information reported by the children indicated that in some cases soldiers were cooperating and coordinating in the abuse, including by bringing children onto the base and past guards, where they were not authorized to be;
- Some of the children reported that soldiers had called out to them and instructed them to approach, after which they had been sexually abused. This open procurement of sex might indicate an environment of impunity, or at least one in which other soldiers turned a blind eye to the crimes;
- In one case, a child reported that when he had refused to participate in the sexual abuse, the soldier had asked him to find him a sex worker, and had also asked his fellow guard if he would like a sex worker too. This exchange suggests that some soldiers were in the habit of procuring sex from the local population;
- All of the alleged acts of sexual violence were reported to have taken place near military checkpoints in locations under the control of Sangaris and MISCA forces. Again, this suggests that other soldiers were turning a blind eye to the violations.

100. In sum, if further investigations had been carried out, they could have revealed the existence of a pattern of sexual violence against children by some peacekeepers. Accordingly, in the Panel's view the information in possession of the Human Rights and Justice Section by the end of May — and certainly by July 2014 — should have triggered a more in-depth investigation of sexual exploitation and abuse by international military troops in the Central African Republic, and particularly the Sangaris forces, as part of the Section's obligation to follow up on the violations.

101. The Panel also notes the failure to investigate allegations against soldiers from other troop-contributing countries referred to in the Sangaris notes. In particular, one child who was interviewed alleged that he had seen Equatorial Guinean and Chadian soldiers, all of whom were part of the MISCA contingent, rape two other children. Although the witness provided the names of both victims, along with descriptions of the alleged crimes, neither the Human Rights and Justice Section nor UNICEF investigated these allegations further.[143] The allegations were apparently forgotten until nearly a year later, when the Office of the Special Representative for Children and Armed Conflict noted that information about these incidents had not been reported through the monitoring and reporting mechanism.[144]

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[143] E-mail between OHCHR and Human Rights and Justice Section staff, 18 May 2015.

[144] E-mail from the Office of the Special Representative of the Secretary-General for Children and Armed Conflict to/copied to UNICEF and OHCHR staff, 12 May 2015; Panel interview; e-mail from the Special Representative of the Secretary-General for Children and Armed Conflict to/copied to Office of Legal Affairs, UNICEF, MINUSCA and Department of Field Support staff, 17 May 2015.

2.5. Monitoring and reporting mechanism

102. In its resolution 1612 (2005), the Security Council established a monitoring and reporting mechanism to track human rights violations affecting children during armed conflict.[145] The mechanism's country task force in the Central African Republic is obliged to report on six types of grave violations committed by any party to the conflict.[146] The country task force is co-chaired by the UNICEF Country Representative and the Special Representative for the Central African Republic.[147] The Special Representative, in cooperation with UNICEF, is required to submit global horizontal notes to the Special Representative for Children and Armed Conflict on a quarterly basis. The global horizontal notes are an avenue for regularly providing updates or alerts on the situation of children affected by armed conflict to the Working Group of the Security Council on Children and Armed Conflict and are not public.[148] Other avenues for reporting publicly include the monitoring and reporting mechanism country-specific annual report of the Secretary-General and the annual report of the Secretary-General on children and armed conflict.[149]

103. Soon after the allegations had come to light, a disagreement surfaced between UNICEF and MINUSCA representatives on the monitoring and reporting mechanism country task force with respect to whether to include the allegations in the mechanism's report to the Special Representative for Children and Armed Conflict. The UNICEF representative was of the view that the Sangaris forces were "parties to an armed conflict", and therefore that the alleged violations had to be reported. MINUSCA officials disagreed that peacekeeping forces should be considered a "party" to a conflict, and ultimately the allegations were not included.[150] Later, at the request of the Executive Office of the Secretary-General, the Special Representative included them in her 2015 report, but the matter does not seem to have been resolved definitively.

104. The monitoring and reporting mechanism is an important tool for the United Nations to ensure that armed forces, including troop-contributing countries, are held accountable for their conduct. In the Panel's view, therefore, allegations of sexual violence against children by peacekeepers should be covered by the mechanism. In this regard, the divergent opinions within the country task force resulted in the failure to utilize the mechanism process. This constitutes a missed opportunity to advocate accountability and reflects negatively on the United Nations.

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[145] See Security Council resolution 1612 (2005), para. 2.

[146] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 22 and 23; and Field Manual for Monitoring and Reporting Mechanism (MRM) on Grave Violations against Children in Situations of Armed Conflict (June 2014), p. 36.

[147] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 11, 12 and 16; and the Secretary-General's directive for his Special Representative and Deputy Special Representative and the Resident Coordinator and Senior Humanitarian Coordinator for the Central African Republic, p. 17; interviews.

[148] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 22 and 23; interviews; e-mail between UNICEF staff, 10 July 2014.

[149] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 20-22; e-mail between UNICEF staff, 10 July 2014.

[150] E-mails between UNICEF staff, 10 and 16 July 2014; interviews.

2.6. The failure of the Special Representative of the Secretary-General for Children and Armed Conflict to follow up

105. The Special Representative for Children and Armed Conflict is tasked with advocating for children who have been affected by the six most grave human rights violations, among which is rape and other forms of sexual violence.[151] In particular, the mandate of the Special Representative is to assess a country's progress towards strengthening the protection of children affected by armed conflict, promote the collection of information about the plight of children affected by armed conflict, work closely with relevant agencies and NGOs, and foster international cooperation to improve their protection.[152] The Special Representative may also advocate directly with Governments with respect to the accountability of perpetrators.[153] The Special Representative plays an important role in supporting the mechanism's country task forces in responding to grave violations against children and protecting children.[154]

106. In July 2014, following internal discussions within UNICEF with respect to how to respond to the allegations, one of the Fund's Deputy Executive Directors met with the Special Representative for Children and Armed Conflict to advise her about them.[155] The Special Representative undertook to raise the matter with the French authorities. On 31 July 2014, the Special Representative had a discussion on the allegations with the Deputy Permanent Representative of France to the United Nations in New York, at which time she asked for action to be taken. The next day, the Deputy Permanent Representative responded that the matter was being taken seriously and that criminal and military investigations had been launched.[156] The Special Representative in turn shared this information with UNICEF.[157]

107. For the Special Representative for Children and Armed Conflict, this appears to largely have been the end of the matter for 2014.[158] Because she had not been alerted to ongoing allegations and assumed that the French authorities had dealt with the matter, she did not consider herself to have any further obligation to respond to the allegations.

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[151] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), p. 7; Field Manual for Monitoring and Reporting Mechanism (MRM) on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 8, 9 and 15; and United Nations, "The six grave violations against children during armed conflict: the legal foundation", working paper No. 1 (New York, October 2009).

[152] See General Assembly resolution 51/77, para. 36.

[153] See Field Manual for Monitoring and Reporting Mechanism (MRM) on Grave Violations against Children in Situations of Armed Conflict, June 2014, pp. 63 and 65, see also p. 52, referring to A/59/695, para. 75.

[154] See Guidelines on the Monitoring and Reporting Mechanism on Grave Violations against Children in Situations of Armed Conflict (June 2014), p. 5; and Field Manual for Monitoring and Reporting Mechanism (MRM) on Grave Violations against Children in Situations of Armed Conflict (June 2014), pp. 63 and 65.

[155] Interview; e-mail between UNICEF staff, 6 August 2014; e-mail from the Special Representative of the Secretary-General for Children and Armed Conflict to the Deputy Secretary-General, 2 June 2015.

[156] Correspondence of the Special Representative of the Secretary-General for Children and Armed Conflict with the Panel, 1 December 2015.

[157] E-mail between UNICEF staff, 3 August 2014.

[158] E-mail from the Special Representative of the Secretary-General for Children and Armed Conflict to/copied to Office of Legal Affairs, UNICEF, MINUSCA and Department of Field Support staff, 17 May 2015.

108. The attention of the Special Representative for Children and Armed Conflict was drawn once more to the matter only when an article was published in *The Guardian* on 29 April 2015,[159] followed by a number of other press and media reports, as well as enquiries from NGOs. At that point, she notified the Deputy Secretary-General that there had been no reference to the allegations in the Secretary-General's annual report on children and armed conflict, as she indicated that she had not received sufficient information on the allegations.[160]

109. In May 2015, the Special Representative for Children and Armed Conflict requested a copy of the Sangaris notes, which she ultimately received. In the Panel's view, once the Special Representative for Children and Armed Conflict had learned of the allegations from UNICEF, it was reasonable to expect that she would contact both the Special Representative for the Central African Republic and the UNICEF Country Representative — respectively, the two co-chairs of the monitoring and reporting mechanism country task force — to follow up on the matter and ascertain what action had been taken. While her actions in alerting the Deputy Permanent Representative of France to the allegations were appropriate, her obligations did not end there. Rather, she had a responsibility to follow up with French authorities to enquire about the outcome of their investigations and whether they had taken appropriate measures to prevent further abuses.

3. Protection of victims and other civilians

3.1. Mandate of the Human Rights and Justice Section to protect children

110. The protection of civilians is part of most military mandates authorized by the Security Council in connection with missions of the Department of Peacekeeping Operations. Pursuant to Security Council resolution 2149 (2014), for example, the protection of civilians is a priority for MINUSCA, particularly with regard to women and children affected by armed conflict.[161] OHCHR also has a particular mandate to ensure that individual victims receive appropriate protection, in addition to investigating and reporting on the violations. This obligation is carried out by the human rights component of a mission, which, in the case of MINUSCA, is the Human Rights and Justice Section.[162]

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[159] E-mail from Special Representative of the Secretary-General for Children and Armed Conflict to the Deputy Secretary-General, 2 June 2015; see *The Guardian*, "United Nations aid worker suspended for leaking report on child abuse by French troops", 29 April 2015, available from www.theguardian.com/world/2015/apr/29/un-aid-worker-suspended-leaking-report-child-abuse-french-troops-car.

[160] E-mail from the Special Representative of the Secretary-General for Children and Armed Conflict to the Deputy Secretary-General, 2 June 2015; e-mail from the Special Representative of the Secretary-General for Children and Armed Conflict to/copied to Office of Legal Affairs, UNICEF, MINUSCA and Department of Field Support staff, 17 May 2015.

[161] See Security Council resolution 2149 (2014), para. 30 (a); and "Military strategy concept of operations (ConOps) for MINUSCA", July 2014, paras. 14 (c) (i) and 31.

[162] See Joint Policy, paras. 49, 50 ("Preventing sexual and gender-based violence, protecting individuals at risk, combating impunity and facilitating remedy for violations are core functions of the human rights component"), 53 and 54; code cable GVA-0286, paras. 5 and 6, sets out the role of the Human Rights and Justice Section in the protection of civilians, victims and vulnerable groups from serious human rights violations, and in humanitarian protection.

111. In carrying out its role in the protection of civilians, a mission can call upon other United Nations bodies for support. In turn, these United Nations funds or agencies coordinate among themselves, often within the framework of a "protection cluster" of humanitarian actors, to provide a network of services such as medical care, psychosocial care, housing and security, depending on the needs of the victim.[163] This network of services is facilitated by the mission, which plays a central role in facilitating and supporting the agencies and NGOs that provide front-line services.[164]

112. Unfortunately, in the case of the allegations, the United Nations and its local partners failed to meet their obligation to protect the child victims. Not only were there unconscionable delays in providing the children with basic medical care, psychological support, shelter, food or protection, but no steps were taken to locate the additional child victims described in the Sangaris notes to determine whether they also required protection and care. The only person who protected the children was the head of the M'Poko NGO, who had originally brought the allegations to the attention of the United Nations and was himself a displaced person with few resources.

113. The specific response of the Human Rights and Justice Section in carrying out this protection mandate is dealt with in the discussion below regarding the conduct of the Head of the Section.

3.2. Mandate of the United Nations Children's Fund to protect children

114. As noted, UNICEF was involved in the investigation of the allegations from the earliest stages and took primary responsibility for providing support and care to the victims.

115. The core mandate of UNICEF is the protection of children from harm, in line with the United Nations Convention on the Rights of the Child and other applicable international treaties.[165] In the context of armed conflict, the Fund's Core Commitments for Children in Humanitarian Action are designed to, among other things, ensure a rapid response by UNICEF by providing services for children who have been identified at the local level as vulnerable and in need of front-line support, including referral to a range of support services such as psychosocial support, family tracing and access to education.[166] The emphasis is on preventing and responding to violence, exploitation and abuse;[167] support strategies may involve supporting the social welfare, education, health, law enforcement and justice sectors.[168] A key element of the strategy is the monitoring of child protection on the ground, including by developing appropriate responses to any risks to a child's life or well-being, in concert with UNICEF partners.[169]

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[163] See, for example, Joint Policy, paras. 78 and 79.

[164] See, for example, Security Council resolution 2149 (2014), paras. 30 (a) (iii) and (iv) and 30 (c).

[165] See E/ICEF/2013/21, para. 1; and Convention on the Rights of the Child, which was signed on 20 November 1989 and entered into force on 2 September 1990; see also UNICEF mission statement, available from www.unicef.org/about/who/index_mission.html.

[166] See E/ICEF/2008/5/Rev.1, para. 37.

[167] Ibid.

[168] Ibid., para. 39.

[169] Ibid., para. 47; see also UNICEF *Core Commitments for Children in Humanitarian Action* (New York, May 2010), pp. 9, 10, 15, 17, 19, 20 and 32; and Child Protection Working Group, "Minimum standards for child protection in humanitarian action" (September 2012), p. 69.

116. UNICEF is specifically engaged in strategies to prevent and respond to sexual violence by working with government, civil society, community leaders, religious groups, the private sector, media, families and children themselves.[170] In 2002, UNICEF supported the Inter-Agency Standing Committee policy statement which endorsed a strong commitment by the humanitarian community to take all measures necessary to prevent and effectively respond to allegations and incidents of sexual abuse and exploitation by humanitarian workers and peacekeepers worldwide.[171] In December 2003, the Executive Director of UNICEF committed to a zero-tolerance policy with regard to the sexual abuse and exploitation of children and any other form of child abuse or exploitation by its staff or those affiliated with UNICEF.[172]

117. As noted, the interviews by the Human Rights Officer and UNICEF took place between 19 May and 24 June 2014. Towards the end of the interviews, UNICEF referred the children to a local NGO partner with which it already had an agreement in place for the provision of medical care, psychosocial support and legal assistance to victims of sexual violence, including children.[173] The Panel received no persuasive explanation as to why the children had not been immediately referred for protection and medical care as soon as they had been interviewed, including a forensic medical examination (to preserve any potential evidence for prosecution).

118. The local partner to which the children had been referred notified UNICEF by a letter dated 7 August 2014 that nine children had been provided psychosocial support and that medical care was ongoing.[174] It is now clear, however, that the local NGO did not provide the children with any medical care at the time, either in the form of an immediate medical examination or in the form of ongoing medical or psychosocial care. Rather, the local NGO provided the services of a social worker, assisted by legal counsel, who devoted a total of two hours in July 2014 to listening to the children (on an individual basis) and filling out forms required by UNICEF.[175] The NGO made no assessment of the children's medical or security needs at that meeting and did not contact the children in the following months, either to provide them with additional services or to assess their well-being.

119. Referring to a single two-hour session in which a social worker, assisted by a lawyer, individually interviews and listens to nine children as "psychological support" appears to the Panel to be a smokescreen.[176] However, the Panel is even more disturbed by the failure of UNICEF to monitor the conduct of its partner NGO or to follow up with the NGO — or the children themselves — to assess the well-

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[170] See, for example, UNICEF, *Core Commitments for Children in Humanitarian Action* (New York, May 2010), p. 34; E/ICEF/2008/5/Rev.1, para. 4; E/ICEF/2011/P/L.21, para. 14; and UNICEF, "Sexual violence against children", available from www.unicef.org/protection/57929_58006.html.

[171] UNICEF executive directive regarding the implementation of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse, CF/EXD/2003-029, 30 December 2003. The Inter-Agency Standing Committee is the primary mechanism for the inter-agency coordination of humanitarian assistance and involves United Nations and non-United Nations partners, including UNICEF (see https://interagencystandingcommittee.org/).

[172] UNICEF executive directive regarding the implementation of the Secretary-General's bulletin on special measures for protection from sexual exploitation and sexual abuse, CF/EXD/2003-029, 30 December 2003.

[173] Agreement between UNICEF and its local partner in 2014.

[174] Letter to UNICEF from its local partner, 7 August 2014.

[175] Interviews.

[176] Letter from UNICEF to the Special Representative of the Secretary-General for the Central African Republic, 17 July 2014.

being of the victims. Moreover, not only did UNICEF fail to monitor whether the NGO was giving proper care and attention to the children, but it also allowed its contract with the local NGO to lapse for a four-month period between 1 November 2014 and 28 February 2015[177] (although it did continue to reimburse the NGO for expenses between 1 November and 15 December 2014).[178] In other words, even had the local NGO been providing appropriate care to the children, this would have ended as a result of UNICEF allowing the contract to expire.

120. It was only in May 2015, after international media outlets had reported on the allegations and a year after the allegations had initially been brought to the attention of the United Nations, that UNICEF followed up to locate the children and address their protection needs.[179] At that time, the local NGO again interviewed the children (the number of whom had increased to 12 by that point).[180] Only then did the NGO arrange for the children to undergo a medical examination conducted by a specialist skilled in treating children.[181] UNICEF also contracted with an additional local NGO to provide housing, clothing and schooling.[182] At the time of the review, these services had been in place for a six-month period, until 30 November 2015.[183] The services were to be reviewed at the end of that period.

121. As stated above, the Panel finds the year-long delay in providing the victims with medical care to be appalling. Not only was a prompt medical examination necessary for the victims' care and protection, but it also could have resulted in relevant and probative evidence necessary for the prosecution of the perpetrators.

122. Further, the Panel is concerned by the failure of UNICEF to locate other potential victims of abuse who were not part of the initial six interviews. When the head of the M'Poko NGO first brought the allegations of sexual exploitation and abuse by peacekeepers to the attention of UNICEF and the Human Rights and Justice Section, he indicated that there were several possible child victims. Not all of these children were interviewed by the Human Rights Officer and UNICEF. In addition, several of the six children who were interviewed identified other children in the course of their interviews who allegedly had either been abused or witnessed abuse by international troops, mostly from the Sangaris forces.[184]

123. Despite this information, UNICEF did not take any steps to locate the additional children who had reportedly been abused, to determine whether they required protection or medical services. This, again, was a serious breach of the duty of UNICEF to protect children. While some additional children were ultimately seen by the local NGO in July 2014 and May 2015, these services were not the result of any particular effort by UNICEF to identify or locate the victims. In the Panel's view, it should have been self-evident to UNICEF that the other additional children who had been identified required immediate medical and psychosocial

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[177] Agreements between UNICEF and its local partner in 2014 and 2015.

[178] Letter from a local partner of UNICEF to UNICEF, 15 December 2014; UNICEF expenses tables.

[179] Interviews; e-mail between OHCHR staff, 7 July 2015.

[180] Interview.

[181] Interview.

[182] UNICEF letter to an additional local NGO, 18 May 2015; interviews.

[183] UNICEF letter to an additional local NGO, 18 May 2015.

[184] Sangaris notes, child 3, child 4, child 5 and child 6.

care, basic humanitarian services and protection from the possibility of recurring abuse.

124. In July 2015, in an effort to address some of these weaknesses in the provision of victim assistance and in the aftermath of the allegations, UNICEF and its partners adopted the standard operating procedures on the prevention of and response to sexual-based violence in the Central African Republic. This document is a positive development. It provides guiding principles focused on ensuring a victim-centred approach that takes into account each victim's individual needs and safety concerns.[185] It also provides for a network of in-country referrals to psychological, medical, spiritual, advocacy and other service providers,[186] and recognizes the special needs and trauma faced by many child victims.[187]

125. It should be noted, however, that at the time when the allegations arose, UNICEF had in place draft standard operating procedures for the Central African Republic on providing services and support to victims.[188] Despite the draft procedures and the guidance that they provided, UNICEF failed to effectively implement them and to provide the victims with support services. Therefore, it is clear that a mere lack of policy guidance was not the cause of the inadequate response by UNICEF to the allegations.

126. The Panel observes here again another instance of the fragmented approach that appears to be endemic in the United Nations. While UNICEF relied on its local partners and on MINUSCA and the Human Rights and Justice Section to take action, MINUSCA and the Section relied on UNICEF to protect the children. In neither case were appropriate steps taken.

4. Accountability

127. The obligation of the United Nations to promote accountability for conflict-related sexual violence is rooted in its duty to promote and protect human rights and to uphold the rule of law.[189] Implementing measures that ensure that perpetrators are prosecuted remains the best way to deter these crimes. It is therefore not enough for the United Nations only to report on acts of sexual exploitation and abuse perpetrated by peacekeepers; it must actively seek to ensure that the perpetrators of such crimes are identified and prosecuted by the relevant troop-contributing countries.

128. The onus in promoting the accountability of perpetrators of human rights violations lies with the United Nations mission in question, in particular its human rights component. Indeed, some of the core functions of the Human Rights and Justice Section are to prevent sexual and gender-based violence, protect individuals at risk, combat impunity and facilitate remedies for violations.[190] The Section has a

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[185] Standard operating procedures for prevention of and response to gender-based violence in the Central African Republic, 24 July 2015.

[186] Ibid., pp. 18-27.

[187] Ibid., in particular pp. 10, 17, 22, 23 and 36.

[188] Interview; draft standard operating procedures for prevention of and response to gender-based violence in the Central African Republic, 23 April 2014.

[189] See, for example, United Nations, "Human Rights up Front", available from www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.shtm; see also Joint Policy, paras. 5 and 8.

[190] Joint Policy, para. 50.

specific responsibility to investigate violations, protect individuals at risk, report on its findings in a timely fashion, follow up on human rights violations and assist in bringing perpetrators to justice.[191]

129. Unfortunately, as already discussed, neither the Special Representative of the Secretary-General nor the Head of the Human Rights and Justice Section appears to have considered the United Nations to have any duty or responsibility to pursue the accountability of the perpetrators, nor did the Africa Branch of OHCHR in Geneva take any steps in that respect. This level of inaction was compounded by a cumbersome bureaucratic process adopted by the Office of Legal Affairs in relation to the immunity enjoyed by United Nations staff.

130. The Panel is fully cognizant of the fact that United Nations staff need to be free from pressure and retaliation in order to be able to perform their duties. To that end, the Staff Rules and Staff Regulations of the United Nations provide that United Nations staff "shall not seek or receive instructions from any Government or from any other authority external to the Organization".[192] This immunity from national legal proceedings is linked to a staff member's work within the Organization. In practice, this means that even where a staff member has collected evidence against a perpetrator, the relevant national Government cannot compel his or her participation in legal proceedings (or the disclosure of the information) unless the Secretary-General waives immunity.

131. At the same time, United Nations policies also impose on staff a duty to cooperate with judicial processes for accountability.[193] In this case, according to a press release dated 7 May 2015 issued by the Prosecutor of the High Court of Paris, the Department of Defence of France transmitted a note to the Prosecution Office on 29 July 2014 concerning allegations of sexual abuse by French troops. The military section of the Prosecution Office requested a preliminary investigation to be conducted jointly by the provost and the Paris gendarmerie. As a result, French investigators travelled to Bangui from 1 to 8 August 2014. When French authorities presented to the United Nations a request for international cooperation and, in particular, a request to interview the Human Rights Officer, the Office of Legal Affairs responded by asserting immunity. This contradicts the principle that staff should cooperate with national authorities to promote accountability.

132. Further, instead of facilitating the interview with the Human Rights Officer, the Office of Legal Affairs asked French authorities to proceed by way of written questions and answers.[194] This resulted in a significantly more cumbersome and lengthy process. For instance, when French prosecutors submitted their written questions,[195] concerns relating to the confidentiality of information prompted OHCHR and the Office of Legal Affairs to advise the Human Rights Officer not to answer questions relating to the identities of victims and other potentially relevant witnesses. This was despite the fact that the Office of Legal Affairs knew that the

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[191] Ibid., paras. 50-62.

[192] See Charter of the United Nations, art. 100; see also ST/SGB/2014/1.

[193] See United Nations, *Treaty Series*, vol. 1, No. 4, sect. 21; and code cable 2329, para. 12.

[194] Press release from the Prosecution Office of the High Court of Paris, 7 May 2015; e-mail from OHCHR to the Office of Legal Affairs, 24 October 2014; e-mail between OHCHR staff, 22 October 2014; e-mail from the Office of Legal Affairs to the Spokesperson for the Secretary-General and Executive Office of the Secretary-General staff, 8 May 2015.

[195] Press release from the Prosecution Office of the High Court of Paris, 7 May 2015.

French authorities already had a copy of the unredacted Sangaris notes. Nevertheless, it instructed the Officer only to provide general information and not to reveal any details relating to witnesses, locations and events.[196] It also advised MINUSCA only to provide the Sangaris notes with confidential information removed, and went through a protracted process of redacting the Sangaris notes.[197]

133. Eventually, the French authorities renewed their request for a waiver of the Human Rights Officer's immunity. In July 2015, one year after French investigators had first arrived in Bangui and sought an interview with the Officer, the Secretary-General waived the Officer immunity, allowing her to participate in the French investigation as a witness.[198]

134. The approach of the Office of Legal Affairs was, in the Panel's view, unnecessarily bureaucratic. A balance must be struck between the need for the United Nations to pursue its mission to prevent human rights violations through the work of its staff, which is the justification for immunity, and an approach that supports the troop-contributing countries in their pursuit of accountability. In this case, the Office's failure to give appropriate weight to the goal of accountability unnecessarily impeded the French investigation and may have resulted in the loss of relevant evidence.

135. Ultimately, effective accountability measures are indispensable to prevent sexual violence by peacekeepers. It is essential not only that troops be told that a zero-tolerance policy applies, but also that they know through direct experience that when violations are committed, there will be serious repercussions. In the absence of such concrete and direct action to hold perpetrators to account, a culture of impunity will prevail.

5. Breakdown in United Nations leadership on the ground

136. The Panel has already described failures that occurred within the Organization at the institutional level, particularly in relation to UNICEF, the Human Rights and Justice Section and MINUSCA. When failures also occur at the personal level, senior officials should be personally accountable.

5.1. The test for abuse of authority

137. Its terms of reference require the Panel to assess whether there was any incident of abuse of authority by senior United Nations officials in connection with the allegations. Before analysing the facts, the Panel must first consider what constitutes abuse of authority in the context of its mandate.

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[196] E-mail between the Office of Legal Affairs and OHCHR staff, 25 February 2015; e-mail between OHCHR staff, 6 March 2015.

[197] E-mail between OHCHR staff, 22 October 2014; exchanges of e-mails between the Office of Legal Affairs and OHCHR Staff from 24 October to 9 December 2014; exchanges of e-mails between OHCHR, the Human Rights Section and the Office of the Deputy Special Representative of the Secretary-General for the Central African Republic from 7 November to 9 December 2014.

[198] French television France 2, *Viols en Centrafrique: l'armée savait-elle plus tôt qu'elle ne le dit?*, 2 October 2015.

138. The terms of reference of the Panel do not define "abuse of authority". To guide its analysis, the Panel relies on several key United Nations documents. The Charter of the United Nations provides that the "paramount consideration" in the employment of staff and in the determination of the conditions of service is the "necessity of securing the highest standards of efficiency, competence and integrity".[199] To give effect to this provision, the General Assembly has promulgated the Staff Regulations, which require that all staff members, regardless of rank, discharge their duties to a similarly high standard.[200] The Regulations are amplified by the Staff Rules and other administrative directives, such as the Secretary-General's bulletins and administrative instructions, as interpreted by decisions issued by the United Nations administrative tribunals.

139. "Abuse of authority" is more specifically defined in the Secretary-General's bulletin on prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, which delineates the concept as follows:

> Abuse of authority is the improper use of a position of influence, power or authority against another person. This is particularly serious when a person uses his or her influence, power or authority to improperly influence the career or employment conditions of another, including, but not limited to, appointment, assignment, contract renewal, performance evaluation or promotion. Abuse of authority may also include conduct that creates a hostile or offensive work environment which includes, but is not limited to, the use of intimidation, threats, blackmail or coercion. Discrimination and harassment, including sexual harassment, are particularly serious when accompanied by abuse of authority.[201]

140. At the request of the General Assembly, OIOS, in consultation with the Office of Legal Affairs and other relevant departments and agencies, adopted the same definition of "abuse of authority" for use in its oversight functions.[202] The Panel, therefore, concludes that this definition establishes the prevailing standard for abuse of authority in the United Nations administrative system not only for the purposes of employment relationships, but also for the use of authority in the broader United Nations context — including the manner in which a senior official exercises his or her authority vis-à-vis United Nations staff and the public at large.

141. Consequently, the Panel notes that the examples included in the Secretary-General's bulletin, which are drawn from an employment context, cannot be understood as restricting the breadth of the concept of abuse of authority solely to abuses that occur in the context of an employment relationship. Senior officials represent the United Nations in the eyes of the public, and they are expected to be accountable for the decisions they make in the execution of their respective mandates.[203] They must uphold United Nations values, principles and rules in

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[199] Charter of the United Nations, art. 101, para. 3.

[200] Ibid., art. 101, para. 1; see also ST/SGB/2014/1, regulation 1.1 (d).

[201] ST/SGB/2008/5, para. 1.4.

[202] See OIOS, "List of key oversight terms", April 2013, p. 3; and General Assembly resolution 64/263. Noteworthy is the fact that OIOS was previously applying a distinct definition; see *United Nations Juridical Yearbook*, pp. 444 and 448.

[203] General Assembly resolution 64/259, para. 8, states, "Accountability is the obligation of the Secretariat and its staff members to be answerable for all decisions made and actions taken by them, and to be responsible for honouring their commitments, without qualification or exception."

accordance with the highest standards. Their actions reflect on the Organization as a whole.

142. The Panel has determined that the concept of abuse of authority, in accordance with the Secretary-General's bulletin, requires that two criteria be met. First, there must have been an improper or wrongful use of the individual s position of authority. Decisions by the United Nations Dispute Tribunal establish that this criterion may be met as the result of an omission to respond,[204] an unreasonable decision[205] and a violation of a fundamental obligation towards the Organization.[206] At the same time, improper decisions must be distinguished from errors of judgment or mere mistakes in the use of authority. The improper decision must be sufficiently serious or egregious to rise to the level of an abuse.

143. Second, the expression "against another person" requires that the position of authority has been used in a detrimental way. In other words, there must have been a negative consequence as a result of the improper use of the individual's position of authority. The word "person" should not be understood narrowly. The negative consequences may be felt not only by an individual person, as in a strictly superior/subordinate relationship, but also by the persons or entities affected by the application of a policy. For example, a case of nepotism may harm not only the rightful beneficiary of a contract, but also the credibility and interests of the Organization as a whole.

144. Finally, the Panel observes that a finding of abuse of authority will also depend on the nature and severity of the improper use of power and of the impact on the affected persons or entities. In other words, whether the decision was an egregious use of the individual's position of power and/or whether the improper decision resulted in significant harm to a person or persons or an entity will be relevant factors in determining if an abuse of authority occurred.

145. With this framework in mind, the Panel examines the conduct on the ground in the Central African Republic in the events that surrounded the allegations. The facts have not been repeated where they are described elsewhere in the present report, and only the most significant actions or omissions are highlighted.[207] The Panel underscores that any individuals against whom the Panel makes adverse observations

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[204] United Nations Dispute Tribunal, *Porter v. Secretary-General of the United Nations* (judgment No. UNDT/2013/156, 4 December 2013), para. 100, states, "The Tribunal finds that the singular issue in this case is that of abuse of authority and that this singular issue became complete at the point when the Administration did not respond to the Applicant's letter in which he was asking for explanations as to why all these things happened."

[205] United Nations Dispute Tribunal, *Kasmani v. Secretary-General of the United Nations* (judgment No. UNDT/2012/049, 26 April 2012), para. 113, referring to the Wednesbury principle of unreasonableness (namely, "A failure by a public authority to have regard to matters which ought to have been considered, which is to be derived either expressly or by implication from the statute under which it purports to act, will be an abuse of its discretion. Similarly, if certain matters are considered, which from the subject matter and the general interpretation of the statute are held by the court to be irrelevant, then this will amount to a defect in the decision-making process").

[206] United Nations Dispute Tribunal, *Wasserstrom v. Secretary-General of the United Nations* (order No. 19 (NY/2010), 3 February 2010), para. 25, as cited in *Kasmani v. Secretary-General of the United Nations* (judgment No. UNDT/2012/049, 26 April 2012), para. 27.

[207] For the main facts, see chronology contained in annex I.

were provided with an opportunity to submit written comments. As provided in the terms of reference of the Panel, their comments are set out in annex III.

5.2. The Head of the Human Rights and Justice Section

146. The Security Council has mandated MINUSCA to prioritize the protection of the civilian population and, in particular, to provide specific protection to women and children affected by armed conflict.[208] In addition, some of the core functions of the Human Rights and Justice Section are the duty to prevent sexual and gender-based violence, protect individuals at risk, combat impunity and facilitate remedies for violations.[209] Therefore, the mandate of the Section in the Central African Republic is a broad one. Not only is it responsible for the promotion and protection of human rights by monitoring and making public reports on human rights violations,[210] but it also has a specific responsibility to investigate violations, protect individuals at risk, report on its findings in a timely fashion, follow up on human rights violations and assist in bringing perpetrators to justice.[211] It is also worth recalling that the Head of the Section reports to the Head of Mission (the Special Representative for the Central African Republic) and is his adviser on human rights matters, and that he represents the United Nations High Commissioner for Human Rights in the Mission and has a responsibility to report to him.[212]

147. The Head of the Human Rights and Justice Section readily acknowledged that the allegations required investigation, and he authorized the Human Rights Officer to interview the alleged victims together with UNICEF. However, from then on, his actions not only were misguided, but also showed a complete disregard for his obligations under Security Council resolution 2149 (2014) and relevant OHCHR policies, and therefore for the victims and the Organization as a whole.

148. The Panel acknowledges the difficult conditions under which the Head of the Human Rights and Justice Section was operating in the summer of 2014. In particular, the ongoing political situation had created unstable security conditions, the Mission was in the midst of a transition from BINUCA to MINUSCA, and the Section was understaffed. Nonetheless, these circumstances do not alleviate the Panel's concerns with respect to the conduct of the Head of the Section.

149. In particular, the Head of the Human Rights and Justice Section neither considered that the protection of the children at risk was his responsibility nor acknowledged that the allegations had brought to light what could potentially be systematic violations which required urgent action to halt further abuse, identify the perpetrators and ensure that they were held accountable. The Head of the Section knew that there were a number of children who had reported sexual abuse to the M'Poko NGO, but who had not been interviewed by the Human Rights Officer. Further, the Sangaris notes, particularly those on the third, fifth and sixth interviews, clearly indicated that more children had been affected by the abuses. The child in the fifth interview had even reported ongoing abuse. The Head of the Section should have directed further investigation into the allegations to determine the need for care for the victims and witnesses, and the extent and scale of the

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[208] See Security Council resolution 2149 (2014), paras. 30 (a) (i) and (ii).

[209] See Joint Policy, para. 50.

[210] See Security Council resolution 2149 (2014), paras. 30 (c) (i) and (ii).

[211] See Joint Policy, paras. 50-67.

[212] Ibid., para. 41.

sexual abuse of vulnerable children by peacekeepers. Instead, he simply considered that the allegations needed to be documented for the sole purpose of reporting, which he carried out as indirectly as possible, and relied on UNICEF to protect the children. This is an illustration of the passing of responsibilities between United Nations units and agencies that results from the fragmented approach to allegations of sexual violence.

150. Furthermore, from the time he learned of the allegations in May 2014, the Head of the Human Rights and Justice Section appears to have been preoccupied by their political sensitivity. In March 2014, the Section had reported on allegations of human rights violations on the part of a Chadian contingent under the command of MISCA,[213] which had resulted in significant political tensions among MINUSCA, OHCHR and the Government of Chad.[214] As a consequence, the Government withdrew its troops from the Central African Republic.[215] Ostensibly on the basis of this experience, the Head of the Section anticipated that any investigation into the allegations against the Sangaris forces would likewise be politically sensitive and would receive significant scrutiny. Because of the importance of France in both the Central African Republic and the United Nations, and to avoid possible retaliation by the Sangaris soldiers implicated in the allegations against the child victims, he therefore decided to treat the allegations with the utmost confidentiality.[216] He agreed with UNICEF that the allegations would not be reported to the Sangaris forces commander until the investigation and the report were complete.[217] While political sensitivity and risk of retaliation are considerations that need to be addressed, the Head of the Section allowed them to overshadow his broader obligations to the victims.

151. The end of the Human Rights Officer's second interview with a child victim, held on 20 May 2014, coincided with a request by OHCHR for the provision of a report on human rights violations by the MISCA troops.[218] As explained above, the purpose of the report was to provide the Department of Peacekeeping Operations with relevant information before it made a final decision about which troops should be transferred from MISCA to MINUSCA. While the Sangaris forces were not the subject of the Department's decision, the Head of the Human Rights and Justice Section nevertheless decided to include a summary of the two interviews that had then been conducted by the Officer.

152. Further, as noted earlier, the Head of the Human Rights and Justice Section deliberately pursued a strategy to keep the allegations as quiet as possible. For example, when the Section (under the direction of its Head) reported the allegations to the Special Representative, it warned him about their sensitivity and the potential

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[213] Statement to the Panel; Human Rights and Justice Section draft report on the 29 March 2014 shootings and the report of 1 April 2014; OHCHR press briefing, 1 April 2014.

[214] Statement to the Panel; e-mail between OHCHR staff, 7 April 2014; comments on the preliminary findings of the Panel.

[215] Statement to the Panel; e-mail between OHCHR staff, 7 April 2014; African Union press statement of 9 April 2014.

[216] Statement to the Panel; comments on the preliminary findings of the Panel.

[217] Statement to the Panel; comments on the preliminary findings of the Panel.

[218] E-mail between Human Rights and Justice Section staff, 16 May 2014; e-mail from OHCHR staff to Human Rights and Justice Section staff, 28 May 2014; and e-mail from OHCHR staff to Human Rights and Justice Section staff indicating a deadline of 30 March 2014 for the submission of the report. Note, however, that the rehatting meeting was held on 29 May 2014.

adverse consequences of their disclosure. According to the Section's note accompanying the preliminary findings at the end of May 2014, the disclosure of the allegations would seriously harm the Mission and destroy the trust of the local population in the international forces.[219] While not expressed in so many words, the advice of the Section to the Special Representative was to keep the allegations quiet, rather than to take action to intervene. Indeed, the Head of the Section adopted a deliberate strategy to obscure the allegations.

153. This strategy, however, was inconsistent with the duty of the Human Rights and Justice Section with respect to the protection of the civilian population, including children. As became clear in the fifth interview conducted by the Human Rights Officer, instances of alleged rape were ongoing. Had the Head of the Section acted on the information known to the Section by 20 May 2014 — which, as indicated above, was sufficient to warrant immediate action to intervene — the abuse reported by the child in interview 5 could potentially have been averted. His first concern should have been to protect the well-being of the children,[220] to prevent any additional abuse, to clearly advise the Special Representative regarding the allegations and to report to the High Commissioner. Even if the Head of the Section usually reports to OHCHR through the Central African Republic desk,[221] issues such as the sexual assault of children must be clearly flagged for immediate action. On important matters, the Joint Policy is clear that the High Commissioner must be kept informed.[222] In this case, political considerations and the fear of a backlash appear to have influenced the Head of the Section and overshadowed his role as the representative of the High Commissioner in MINUSCA.

154. While the Special Representative for the Central African Republic also failed to respond to the allegations, this does not excuse the inaction of the Head of the Human Rights and Justice Section. Rather, in such circumstances, he had an even greater obligation to report to the High Commissioner.[223]

155. Not only did the preliminary findings fail to meet the obligation of the Head of the Human Rights and Justice Section to report, but once the Human Rights Officer had finished her interviews at the end of June 2014 and he had much more extensive information about the alleged abuses, he again did not adequately report on the allegations to the High Commissioner. Instead, for the second time the Head of the Section decided to prepare a report for OHCHR that avoided singling out the allegations against the Sangaris forces. In the second report, dated 17 July 2014, he combined details of the allegations with allegations of serious human rights violations committed by other international troops in the Central African Republic, such as torture and killings. This decision had two effects: first, it delayed the transmission of information about the allegations to OHCHR, which should have been communicated urgently; second, it obscured the significance of the allegations

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[219] E-mail from the Officer-in-Charge of the Human Rights and Justice Section to the Special Representative of the Secretary-General for the Central African Republic, 1 June 2014.

[220] While the main mandate of UNICEF is to protect the well-being of children, this also forms part of the mandate of MINUSCA and the Human Rights and Justice Section.

[221] See "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007), paras. 5.2 and 5.4.

[222] See Joint Policy, para. 41; see also paras. 69 and 70. See also "OHCHR standard operating procedure on weekly, daily and ad hoc ('spot') reports from field presences", OHCHR/CBB/02/07 (5 February 2007), para. 5.4.

[223] See Joint Policy, para. 41.

by burying them among other very serious allegations against other foreign troops. The strategy of the Head of the Section is confirmed both in an e-mail that he sent to the Human Rights Officer[224] and in an inter-office memo that he prepared.[225] In both documents, he indicated that a deliberate decision had been made at a staff meeting not to single out the allegations — or, by implication, France. While human rights components sometimes elect to prepare broad reports on patterns of human rights violations, this should not have prevented the Head of the Section from reporting separately on the allegations in a direct and urgent manner in order to trigger appropriate follow-up, given that they involved the sexual abuse of children.[226]

156. That the Head of the Human Rights and Justice Section used the 17 July 2014 report merely as a strategy to report on the allegations without specifically alerting the High Commissioner to the incidents is further confirmed by the fact that, when he learned in August 2014 that the French authorities were already aware of the allegations, he decided not to bother to finalize the report.[227] Moreover, when he heard of the transmission to the French authorities, his main concern became the fact of the transmission itself, rather than the violations of human rights or the protection of the children. Yet, the fact that the Sangaris notes were sent without his authorization — and that the French authorities had a copy of them — was irrelevant to his obligation to bring all of the allegations contained in the 17 July 2014 report to the attention of the High Commissioner. Again, it should be noted that, while the 17 July 2014 report contained important and detailed information about the allegations, it also included allegations of serious misconduct against other military forces.

157. Given these circumstances, the Panel finds that, with respect to the first element of an abuse of authority, the deliberate decision by the Head of the Human Rights and Justice Section to obscure the allegations, his failure to immediately and specifically advise the Special Representative on the urgent and appropriate measures that should be taken, his failure to immediately and effectively apprise OHCHR or the High Commissioner of the allegations and his failure to take effective action aimed at further investigating and preventing the continuation of the abuses all resulted in an egregious and improper use of his authority.

158. With respect to the second element of an abuse of authority — the impact of the improper decision — the nature of the harm is shocking. The Panel, having taken into account the extreme vulnerability of the children affected by the improper decision, finds that they have suffered harm at a number of levels, including the total lack of early support and protection. The failure to take preventive steps and to intervene to stop the abuses exposed the children (and potentially other victims who have not been identified) to repeated assaults of the most despicable nature. Moreover, it seriously compromised the identification of the perpetrators and jeopardized the collection of evidence. Therefore, it undermined the possibility of bringing all of the perpetrators to justice and impeded accountability. This also seriously impaired the overall response of the Organization and has negatively

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[224] E-mail between Human Rights and Justice Section staff, 7 July 2014.

[225] Interoffice memorandum from the Head of the Human Rights and Justice Section, August 2014.

[226] See section on protection above.

[227] E-mail from the head of the Human Rights and Justice Section to OHCHR staff, 24 May 2015; OHCHR updated chronology of the clearance of the draft report, dated 3 June 2015.

affected both the integrity of its peacekeeping mission in the Central African Republic and the credibility of the United Nations overall. In the view of the Panel, the United Nations criteria for a finding of abuse of authority are met. Together, the elements of the definition present a clear picture of abuse of authority. Put bluntly, the Head of the Human Rights and Justice Section failed to uphold the very raison d'être of the Section.

5.3. The Special Representative of the Secretary-General for the Central African Republic

159. As Head of Mission and the most senior United Nations official in the Central African Republic,[228] the Special Representative for the Central African Republic knew, or ought to have known, that he was the person most able to intervene with officials to hold the perpetrators accountable and to stop the abuses from recurring.[229] He failed to discharge his responsibilities. Although the Special Representative was made aware of the allegations on a number of occasions, he took no steps to ensure that follow-up occurred, either with respect to the perpetrators or with respect to the victims. The Panel notes that the Special Representative has assumed responsibility for his failure to respond adequately to the allegations and, on 12 August 2015, resigned from his position.[230] Notwithstanding the resignation of the Special Representative, the Panel is asked to examine the conduct of senior officials in response to the allegations. On the basis of the facts reviewed in the present report, the Panel summarizes its observations on the Special Representative's conduct below.

160. On 1 June 2014, the Special Representative received, through e-mail, a copy of the preliminary findings of the Human Rights and Justice Section dated 30 May 2014, which described allegations of the egregious sexual abuse of children by members of the Sangaris forces. Despite the gravity of the allegations, he failed to immediately alert any of the senior officers of the Sangaris forces, the Under-Secretary-General for Peacekeeping Operations, the Ambassador of France in the Central African Republic or the United Nations High Commissioner for Human Rights. On 4 July 2014, the allegations were raised at a senior management meeting,[231] but again the Special Representative took no follow-up action. On 17 July 2014, he received not only a copy of the 17 July 2014 report on violations of human rights by international forces from the Section, which included the allegations, but also a letter from the UNICEF Country Representative alerting him to the allegations and expressing his hope that the letter would help determine the appropriate course of action. Although the Country Representative indicated that the children were receiving appropriate psychological and medical services, he asked to meet with the Special Representative to discuss the matter further.[232] The Special Representative did not follow up on this request.

161. On 6 August 2014, the UNICEF Deputy Country Representative also wrote to the Special Representative, informing him that French investigators had contacted UNICEF staff and requested that he intervene with the Sangaris forces leadership

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[228] See Security Council Resolution 2149 (2014), para. 28; and the Secretary-General's directive on the Special Representative of the Secretary-General for the Central African Republic, p. 18.

[229] See Joint Policy, para. 69; see also para. 86.

[230] See "Full transcript of Secretary-General's remarks to press on the Central African Republic", 12 August 2015, available from www.un.org/sg/offthecuff/index.asp?nid=4046.

[231] Action points of MINUSCA senior management meeting, 4 July 2014.

[232] Letter from UNICEF to the Special Representative of the Secretary-General for the Central African Republic, 17 July 2014.

and French authorities to ensure better protection of victims during the investigation.[233] The Special Representative did not respond to either request. On 6 August 2014, the Special Representative asked his staff to prepare a code cable urgently with a view to informing the Under-Secretary-General for Peacekeeping Operations and the High Commissioner of the allegations,[234] but he inexplicably failed to follow up with his staff in a timely way. Nearly a month passed before the Special Representative followed up on the matter. Even when he learned that the draft code cable had not been finalized, the Special Representative took no further action, with the result that the code cable was never sent.[235]

162. The volatile security situation in the Central African Republic, the potential political sensitivity of the allegations and the absence of clear guidelines with respect to troops not under United Nations command provide some context to the Special Representative's conduct. However, they do not justify his persistent failure to take action in the face of the seriousness of the allegations and the direct requests by UNICEF for his intervention to help ensure the children's protection. The Special Representative's failure to respond demonstrates that preventing the sexual abuse of children and ensuring the accountability of those responsible for such crimes did not, in the summer of 2014, rank among his priorities. This is directly contrary to the Secretary-General's note of guidance on integrated missions and to the Joint Policy, both of which impose on the Special Representative a duty to uphold human rights in the implementation of the mandate of MINUSCA.[236] As the person charged with leading the Mission, the Special Representative cannot shift the blame for his own inaction to his subordinates or other agencies. The responsibility for the failure to respond to the allegations in a timely and decisive manner, despite multiple opportunities to do so, ultimately rests with the Special Representative as the Head of Mission.

163. Applying the two elements of an abuse of authority, the Panel finds that the recurrent and persistent failures by the Special Representative to report the allegations constitute a serious violation of his obligations under United Nations policies. His repeated decision to take no action was clearly improper. This inaction had an obviously negative and potentially devastating impact, as it delayed the possibility of holding the perpetrators accountable and likely exposed the children to further abuses. Finally, the persons who were affected by the improper decision-making were among the most vulnerable segments of society: unaccompanied, internally displaced and hungry young children. The Panel finds that the Special Representative's failure to fulfil his responsibilities as Head of MINUSCA was so egregious that it rises to the level of an abuse of authority.

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[233] Letter from UNICEF to the Special Representative of the Secretary-General for the Central African Republic, 6 August 2014.

[234] E-mail from the Special Representative of the Secretary-General for the Central African Republic to staff, 6 August 2014.

[235] Exchange of e-mails between the Special Representative of the Secretary-General for the Central African Republic and his Office, 3 September 2014.

[236] See the Secretary-General's note of guidance on integrated missions, clarifying the role, responsibility and authority of the Special Representative of the Secretary-General and the Deputy Special Representative of the Secretary-General/Resident Coordinator/Humanitarian Coordinator, 17 January 2006, para. 16; and Joint Policy, para. 37; see also the Secretary-General's directive on the Special Representative of the Secretary-General for the Central African Republic, p. 19.

Part IV. Response to the allegations by the United Nations in Geneva and New York

164. In this part, the Panel examines the responses of United Nations agencies and staff to the allegations after they had been communicated from the Central African Republic to Geneva and New York. First, the Panel examines whether any senior officials abused their authority in relation to the decision of the Director of the Field Operations and Technical Cooperation Division to share the Sangaris notes with French authorities. Second, the Panel reviews the institutional failings of a number of United Nations agencies in relation to their handling of the allegations.

1. Breakdown in United Nations leadership in Geneva and New York

1.1. The Director of the Field Operations and Technical Cooperation Division

165. At the end of June 2014, without disclosing her actions to the Head of the Human Rights and Justice Section, the Human Rights Officer e-mailed the Sangaris notes to a staff member in the Peace Missions Support and Rapid Response Section of OHCHR in Geneva. Recognizing the gravity of the allegations, the recipient forwarded the notes to her Head of Section with a message indicating that reports emanating from the Human Rights and Justice Section were often not shared with OHCHR in Geneva.[237] The Chief of the Peace Missions Support and Rapid Response Section undertook to meet with the Director of the Field Operations and Technical Cooperation Division, who is responsible for both the Africa Branch and the Peace Missions Support and Rapid Response Section. The Director indicated that he would deal with the matter.[238] On 23 July 2014, the Director verbally apprised the Deputy Representative of the Permanent Mission of France in Geneva of the allegations. In addition, in response to the Deputy Representative's request, the Director provided him with a copy of the Sangaris notes. He did not redact confidential information from the notes before transmitting them.[239]

166. On 7 August 2014, during a regular meeting with the Deputy High Commissioner, the Director of the Field Operations and Technical Cooperation Division informed her that he had transmitted the Sangaris notes to the French authorities and also handed her a hard copy of the notes. The Deputy High Commissioner indicates that she herself mentioned this fact to the High Commissioner in October 2014, but that the High Commissioner appeared to be preoccupied at that time with another alleged unauthorized transmission of information. The Deputy High Commissioner then appears to have forgotten about the 7 August 2014 meeting. That the information she received during the 7 August 2014 meeting did not leave an imprint on her memory probably reflects the fact that she saw nothing untoward in the transmission of the notes and that such transmission was consistent with the responsibilities of the Director. Indeed, one of the topics on the agenda of the 7 August 2014 meeting was the performance assessment of the Director, which, as indicated below, includes communicating with Member States. Some

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[237] E-mail between OHCHR staff, 27 June 2014; interviews; statement of March 2015.

[238] Interviews.

[239] Interviews; statement of March 2015. The exact date of transmission cannot be determined; however, the Permanent Mission of France to the United Nations Office and other international organizations in Geneva acknowledged receipt by letter dated 30 July 2014.

months later, in March 2015, the Director's conduct in transmitting the Sangaris notes came under intense scrutiny by the High Commissioner for Human Rights and a number of other senior United Nations officials.

167. The Panel examines whether the Director's conduct in transmitting the unredacted Sangaris notes constitutes an abuse of authority.

168. As noted in part III above, according to the Secretary-General's bulletin on prohibition of discrimination, harassment, including sexual harassment, and abuse of authority, there are two criteria for a finding of abuse of authority. First, there must have been an improper or wrongful use of the individual's position of authority. This may include a failure to respond, an unreasonable decision (of a sufficient degree of severity) or the violation of a fundamental obligation towards the Organization. Second, the expression "against another person" requires that the position of authority have been used in a detrimental way and that there have been a negative consequence as a result of the improper use of authority. This can include harm to an individual or to an entity, such as the United Nations as an organization.

169. In the course of the review, it became apparent that OHCHR staff and officials have strongly divergent views with respect to their interpretation of the Director's authority to transmit the Sangaris notes in an unredacted form. According to one interpretation, the Director had no delegated authority to transmit to a Member State a report on human rights violations; further, he breached the policies relating to the protection of victims and witnesses by failing to redact confidential information from the notes. According to another interpretation, the Director of the Field Operations and Technical Cooperation Division, acting in line with internal OHCHR policies and practice, did have such authority and there are circumstances in which the communication of confidential information to third parties is justifiable. The Panel examines these opposing interpretations below.

170. As a preliminary matter, however, the Panel must first examine a related issue raised by participants in the review who alleged that personal interests had motivated the Director's decision to transmit the Sangaris notes to the French authorities. Some background is required. At the request of the High Commissioner, the Director of the Field Operations and Technical Cooperation Division was investigated by OIOS from October 2014 to June 2015 for allegedly communicating to another United Nations Member State internal confidential information concerning the position of OHCHR on a controversial issue.[240] While the investigation in respect of this other alleged leak did not result in any finding of misconduct,[241] some officials in OHCHR nevertheless remain convinced that the Director misused confidential internal information to gain a Member State's support for a promotion that he was seeking. On this basis, some interviewees expressed the view that the Director's motive in transmitting the Sangaris notes to the French authorities must also have been to curry favour in support of some unspecified personal agenda. However, after considering the documentation that was provided both in relation to the alleged leak to the other Member State, and to France, the Panel has found no basis on which to conclude that the Director had a self-interest or ulterior motive in transmitting the Sangaris notes to the French authorities.

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[240] This alleged leak is distinct from the allegations and does not concern either the Central African Republic or France.

[241] OIOS letter to the Office of the United Nations High Commissioner for Human Rights, copied to the Chef de Cabinet, 2 June 2015.

171. With regard to the varying interpretations of the Director's sphere of authority, all OHCHR staff, as well as other human rights components within the Organization, are mandated to actively promote and protect human rights, particularly within vulnerable populations, and to intervene where abuses occur. The policies also repeatedly emphasize the importance of reporting and sharing information as critical to promoting accountability.[242] The policies make it equally clear that in many circumstances it will be appropriate for staff, not just the High Commissioner, to actively intervene to address human rights concerns by communicating information to the relevant government authorities[243] or by engaging in "quiet diplomacy" "at local, national and international levels",[244] including with Governments through their ambassadors.[245] This includes sharing reports with selected actors on a "need to know" basis, "subject to receiving the appropriate assurances of confidentiality".[246] It is also noteworthy that such "quiet diplomacy" is entirely consistent with the Director's own job description and periodic assessment criteria, which provide that the Director shall engage in informal meetings with governmental authorities in order to enhance partnerships with Member States and to pursue the human rights agenda of the Organization.[247]

172. There is therefore a well-established basis in United Nations policies for United Nations staff, and indeed for the Director of the Field Operations and Technical Cooperation Division in particular, to share with relevant government authorities information with respect to human rights abuses.

173. Moreover, the Panel received considerable information from the human rights components of United Nations missions in a number of regions across the world concerning the practice of communicating informally with government officials to follow up on human rights violations. The Panel was informed that this practice is an essential part of their operations and that a change in the practice would undermine their ability to work effectively. Given the consistency with which this practice was reported in the course of the review, it finds that such a practice must indeed be well established. Consequently, the Panel finds that the informal communication of information by the Director to third parties, such as Member States, is not only contemplated by OHCHR policies, but also forms an integral part of the practice of following up on human rights violations.

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[242] See United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011), chap. 13, pp. 4 and 7; "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 366, para. 1.

[243] See "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 366, para. 4; see also p. 367, para. 10; "Advocacy and intervention with the national authorities", chap. 31, pp. 4 and 22; and "Engagement with national authorities and institutions", chap. 17, pp. 3 and 5, in United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011).

[244] See Joint Policy, para. 69.

[245] See "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 377, para. 48.

[246] See OHCHR, "Standard operating procedure on weekly, daily and spot reports", para. 4.4; see also United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011), chap. 13, p. 24; Joint Policy, para. 67; and OHCHR, "Standard operating procedure on monthly reports", para. 4.4.

[247] Performance management record of the Director for 2013-2014; job description for the position of Director of the Field Operations and Technical Cooperation Division.

174. With respect to the allegation that the Director breached United Nations policies on the protection of victims and witnesses by providing the Permanent Mission of France in Geneva with an unredacted copy of the Sangaris notes, the Panel finds that this argument has become overstated. Had the fact that the victims' identities were shared with French authorities really been considered such a risk to the children's safety, one would have expected the United Nations — in particular UNICEF and the Human Rights and Justice Section — to take urgent steps to protect the children from possible reprisals when it became known that their identities had been disclosed. Instead, no one took any steps whatsoever to locate the children or to relocate them out of the M'Poko camp in the summer or fall of 2014. Indeed, when UNICEF learned that the Sangaris notes had been transmitted to the French authorities in an unredacted form, it treated this breach as a "procedural mistake" which did not prompt any protective measure.[248] In fact, the Head of the Section, a large number of Section and UNICEF staff members, the Central African Republic desk in Geneva, the Chief of the Africa Branch, most of the staff of the Peace Missions Support and Rapid Response Section and the Deputy High Commissioner all knew in July or early August 2014 that the Director of the Field Operations and Technical Cooperation Division had transmitted the unredacted notes to the Government of France, and no one complained that he should be investigated. In view of these circumstances, it seems disingenuous for the United Nations, in March 2015, to have revisited the Director's conduct in transmitting the unredacted Sangaris notes and to have characterized it as "misconduct".

175. In the Panel's view, however, the Director's decision to disclose the Sangaris notes in an unredacted form must nonetheless be subject to scrutiny. While it may be necessary to disclose confidential information to prompt meaningful intervention,[249] the level of detail required varies depending on the circumstances. Respect for the "do no harm principle" and maintaining the privacy and confidentiality of witnesses and victims are important rules governing OHCHR staff.[250] Also relevant to the analysis is the fact that the Sangaris notes were not a finished product, but only a compilation of interview notes. Sharing interview notes is not common practice.[251]

176. Therefore, when the Director of the Field Operations and Technical Cooperation Division transmitted the Sangaris notes to the French authorities, he could have done so with more regard to ensuring that mechanisms were in place to minimize any risks to the victims. Although the Permanent Mission of France in Geneva provided verbal reassurance that it would safeguard the confidentiality of

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[248] E-mail from and to various UNICEF staff members, 6 August 2014.

[249] E-mail from the Director of the Rule of Law Unit of the Executive Office of the Secretary-General to other United Nations staff, 1 May 2015.

[250] See "Basic principles of human rights monitoring", chap. 2, pp. 4 and 6-7; "Protection of victims, witnesses and other cooperating persons", chap. 14, pp. 7 and 8; "Advocacy and intervention", chap. 31, p. 11, in United Nations, *Manual on Human Rights Monitoring*, HR/P/PT/7/Rev.1 (New York/Geneva, 2001); "Following up and seeking corrective action", in *Training Manual on Human Rights Monitoring*, HR/P/PT/7 (United Nations publication, Sales No. E.01.XIV.2), p. 366, para. 4; see also p. 374, para. 33; Joint Policy, para. 55; and OHCHR, "Code of conduct for OHCHR staff (1988), para. 11; see also "OHCHR/Department of Peacekeeping/Department of Political Affairs policy directive on public reporting by human rights components of the United Nations peace operations" (1 July 2008), annex 4, pp. 15 and 16, para. 1.7.

[251] United Nations, Manual on Human Rights Monitoring, HR/P/PT/7/Rev.1 (New York/Geneva, 2011), p. 12.

the information,[252] this should have been confirmed in more formal terms, for example, with a written undertaking that the notes would not be used without clear instruction to safeguard their confidentiality and respect the needs of the children during any investigation.

177. The Panel notes, furthermore, that while the Director of the Field Operations and Technical Cooperation Division readily acknowledged to the Head of the Human Rights and Justice Section on 5 August 2014 that he had communicated the information contained in the Sangaris notes to the French authorities, he did not acknowledge that he had shared the actual written notes.[253] Had the Director fully admitted his role in written form, it is likely that there would have been less misunderstanding.

178. Ultimately, however, the fact that the Director of the Field Operations and Technical Cooperation Division provided detailed and credible information to the French authorities appears to have had a significant and positive effect. After the Director had transmitted the information, the Government of France took strong and immediate action to investigate the allegations. This response stands in stark contrast to the apparent failure of French authorities to react after the Human Rights Officer apprised senior Sangaris officers of the allegations (without any of the confidential details) in May 2014.

179. In sum, the Panel must take note of the seniority of the Director of the Field Operations and Technical Cooperation Division within OHCHR, his extensive experience with field missions, his knowledge of the state of the Human Rights and Justice Section in the Central African Republic,[254] the fact that the Section had not followed up on the allegations despite the need for urgent action, and the assurances he received that the information would be kept confidential and, more important, that France would take action to bring the perpetrators to justice.[255] Considering the policies and practices governing OHCHR staff, as well as the responsibilities of the Director, the Panel finds that the transmission of the Sangaris notes to the French authorities, even in an unredacted form, does not constitute an improper use of a position of authority. Since the first criterion for a finding of abuse of authority is not present, no adverse finding is made against the Director on this issue.

1.2. The United Nations High Commissioner for Human Rights

180. On 6 March 2015, the High Commissioner learned that it was the Director of the Field Operations and Technical Cooperation Division who had transmitted the Sangaris notes to the French authorities.[256] In the context of the investigation into the Director's conduct regarding the first alleged leak to the other Member State,

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[252] Statement of March 2015; comments on the preliminary findings of the Panel.

[253] E-mail from the Director of the Field Operations and Technical Cooperation Division to the Head of the Human Rights and Justice Section, 5 August 2014.

[254] In particular, the fact that (a) the Mission was in transition, (b) the Human Rights and Justice Section was not yet fully staffed, (c) OHCHR had attempted to appoint a more senior head of the human rights component, but this individual had resigned, and (d) the original message forwarding the Sangaris notes to the Peace Missions Support and Rapid Response Section in Geneva stated that the Mission had not, in the past, transmitted reports to OHCHR.

[255] Statement of March 2015; letter from the Permanent Representative of France to the United Nations Office and other international organizations in Geneva to OHCHR dated 30 July 2014 and received on 5 August 2014 by OHCHR.

[256] Statement of March 2015.

which was ongoing at the time, the High Commissioner treated the transmission of the Sangaris notes as another unauthorized sharing of information by the Director, and as part of an overall problem of leaks, which apparently plagues OHCHR more broadly.

181. A few days later, on 10 March 2015, the High Commissioner learned that OIOS would likely close its investigation into the first leak with a finding that the allegations against the Director could not be substantiated.[257] On 11 March 2015, the High Commissioner requested his Deputy to meet with the Director of the Field Operations and Technical Cooperation Division to discuss the leaking of the Sangaris notes.[258] During this meeting, held on 12 March 2015, the Deputy asked for the Director's resignation.[259] The Director refused. He explained his motivation and reminded the Deputy that he himself had advised her in August 2014 that he had transmitted the Sangaris notes to the French authorities, and that she had not indicated at that time that his conduct was improper.[260] According to the Deputy High Commissioner, the Director further claimed that the public would not react positively to such treatment of a whistle-blower.[261]

182. On 20 March 2015, the High Commissioner, with the support of the Chef de Cabinet of the Secretary-General, convened a high-level meeting during a Secretary-General's retreat in Turin, Italy, to discuss the conduct of the Director of the Field Operations and Technical Cooperation Division in relation to the transmission of the Sangaris notes to the French authorities.[262] In attendance at that meeting were, in addition to the High Commissioner, the Deputy High Commissioner, the Assistant Secretary-General for Human Rights, the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Under-Secretary-General for Human Resources Management.[263] In the course of the meeting, it became clear that the High Commissioner was not aware of all the relevant facts.[264] It was decided that statements would be collected from key individuals — the Director of the Division, the Human Rights Officer, the Deputy High Commissioner and the High Commissioner — to clarify the facts.[265]

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[257] E-mail from the Chef de Cabinet to the High Commissioner, 10 March 2015.

[258] Statements of March 2015; interviews.

[259] According to the Director, the Deputy indicated that the request had come on behalf of the High Commissioner. Still, according to the Director, the Deputy High Commissioner also stated that the request had come from the Under-Secretary-General for Peacekeeping Operations. This latter statement is denied by the Deputy and is not confirmed by independent evidence provided to the Panel (statement of March 2015; interviews).

[260] Statement of March 2015.

[261] Statement of March 2015.

[262] Ibid.; exchange of e-mails between the Chef de Cabinet, the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Assistant Secretary-General for Human Resources Management, 19 and 20 March 2015.

[263] E-mail from the Director of the Ethics Office to the Assistant Secretary-General for Human Resources Management and the Chef de Cabinet, 20 March 2015; interviews.

[264] For example, the High Commissioner told the participants that the incidents had occurred in Mali, not the Central African Republic: statement of March 2015; e-mail from High Commissioner to the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Assistant Secretary-General for Human Resources Management of 25 March 2015.

[265] E-mail between OIOS staff, 9 April 2015.

183. By 30 March 2015, all of the statements had been sent to the Director of the Ethics Office.[266] After reading them, the Director of the Office wrote to the High Commissioner stating that in her view the sequence of events needed to be clarified.[267] A further meeting was held on 8 April 2015, after which, on 9 April 2015, the Director of the Office suggested that still further inquiries should be undertaken.[268] However, by then the High Commissioner had already made a decision to ask for a formal investigation into the conduct of the Director of the Field Operations and Technical Cooperation Division, as well as for his administrative suspension.[269] Indeed, in a brief note to the Under-Secretary-General for Internal Oversight Services dated 9 April 2015, the High Commissioner requested "that a formal investigation be launched forthwith by OIOS".[270] On the same day, the High Commissioner requested that the United Nations Office at Geneva place the Director of the Division on administrative leave in connection with his alleged leaking of the Sangaris notes. However, the High Commissioner asked that the Director of the Division not be notified before 17 April, because he himself would be away until then.[271] Within a matter of hours, the Under-Secretary-General wrote to the High Commissioner, the Chef de Cabinet and the Director of the Office that she had initiated an investigation into the alleged misconduct of the Director of the Division.[272] On 16 April, the Under-Secretary-General confirmed to the High Commissioner that the OIOS investigation with respect to the Director of the Division was under way.[273] On 17 April, the Director of the Division was notified of the OIOS investigation and that he was being placed on administrative suspension immediately.[274] While the suspension has since been lifted, the investigation into the Director's conduct is ongoing.[275]

184. In the Panel's view, the High Commissioner acted on the basis of a predetermined view of the motives of the Director of the Field Operations and Technical Cooperation Division. The High Commissioner was convinced that the Director had previously leaked confidential information to a Member State for personal gain (i.e., to gain the Member State's support for a promotion). This had influenced his interpretation of the Director's motives in communicating the Sangaris notes to the French authorities and prompted him to request the help of the

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[266] Notably, the Director did not claim in his statement to be a whistle-blower; rather, he took the position that he was appropriately fulfilling the duties assigned to him and that he had reported his actions to the Deputy High Commissioner in August 2014 (statement of March 2015).

[267] E-mail from the Director of the Ethics Office to the High Commissioner, copied to the Chef de Cabinet and the Under-Secretary-General for Internal Oversight Services, 30 March 2015.

[268] E-mail from the Director of the Ethics Office to the High Commissioner and the Chef de Cabinet, copied to the Under-Secretary-General for Internal Oversight Services, 9 April 2015; statement to the Panel.

[269] E-mail from the High Commissioner to the Director of the Ethics Office, copied to the Chef de Cabinet and the Under-Secretary-General for Internal Oversight Services, 9 April 2015.

[270] Note from the High Commissioner to the Under-Secretary-General for Internal Oversight Services, 9 April 2015.

[271] Note from the High Commissioner to the United Nations Office in Geneva, 9 April 2015.

[272] E-mail from the Under-Secretary-General for Internal Oversight Services to the Director of the Ethics Office, copied to the High Commissioner and the Chef de Cabinet, 9 April 2015.

[273] E-mail from the Under-Secretary-General for Internal Oversight Services to the High Commissioner, 16 April 2015.

[274] Letter from the Office of the Director of the United Nations Division of Administration, 17 April 2015.

[275] See United Nations Dispute Tribunal, *Kompass v. Secretary-General of the United Nations* (order No. 139 (GVA/2015), 10 July 2015).

Chef de Cabinet of the Secretary-General to convene the high-level meeting of 20 March 2014 to discuss the possible discipline. The decision of the High Commissioner also resulted in two senior United Nations officials being requested to attend meetings at which their independence was compromised or put at risk of compromise.

185. It should be noted that the High Commissioner first learned in the fall of 2014 that the Sangaris notes had been transmitted to the French authorities.[276] At that point, he was not informed that it was the Director of the Field Operations and Technical Cooperation Division who had transmitted the notes. Had the identity of the person who had transmitted the information been cause for actual concern, it would have been easy enough for the High Commissioner to find out who had done so, given that numerous staff knew of the Director's conduct. Instead, the High Commissioner waited more than six months to enquire about the so-called "leak" and then sought advice from high-level officials, who, except for his Deputy, had no relevant information with respect to the facts of the situation.

186. The High Commissioner's single-minded determination to pursue a complaint against the Director of the Field Operations and Technical Cooperation Division also led to his request for an investigation into the Director's conduct, despite the fact that, as the Panel has noted above, the transmission of information to a Member State is contemplated by OHCHR policies, human rights practice and the Director's personal evaluation criteria.

187. Furthermore, the Panel observes that the High Commissioner justified his request to place the Director of the Field Operations and Technical Cooperation Division on administrative suspension on the basis that there was an "unacceptable risk" that the Director would destroy evidence.[277] This was despite the fact that he knew that OIOS, the investigative body, did not consider that any such risk existed.[278] Similarly, it is worth noting that, in the very same letter in which the High Commissioner requested the suspension, he also asked the United Nations Office at Geneva to delay imposing the suspension by a week because he was travelling out of town.[279] As the United Nations Dispute Tribunal found when it ordered the suspension of the Director's administrative leave,[280] had there been a real risk of destruction of evidence, it would not have been appropriate to delay the suspension by seven days. Moreover, the Director had already had ample time to tamper with the evidence had he wanted to do so, since he had first been asked to resign on 12 March 2015.

188. Nevertheless, while the Panel is of the view that the High Commissioner's actions were ill advised, they do not rise to the level of an abuse of authority. The High Commissioner's actions extended to making requests of other senior officers: he asked for meetings, an investigation and the imposition of administrative leave. Although the High Commissioner had predetermined that the Director had acted out of personal interest, he also appears to have been motivated in his requests by a desire to clamp down on what he regarded as an ongoing problem of leaks in OHCHR.

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[276] Statement of March 2015.

[277] Note from the High Commissioner to the United Nations Office at Geneva, 9 April 2015.

[278] Exchanges of e-mails between OIOS staff, 17 and 20 April 2015.

[279] Note from the High Commissioner to the United Nations Office at Geneva, 9 April 2015.

[280] See United Nations Dispute Tribunal, *Kompass v. Secretary-General of the United Nations* (order No. 139 (GVA/2015), 10 July 2015), paras. 41 and 42.

189. The High Commissioner's request for an investigation into the Director's conduct, and his request to place the Director on administrative leave, also do not constitute an improper effort to influence or pressure other officials. The officials to whom he made these requests were of a rank equal to that of the High Commissioner or of a comparably senior rank. They therefore had sufficient seniority within the Organization that they could be expected to be able to act independently in carrying out their respective mandates, including their responsibility to ensure that the Director's rights were not unfairly impacted by the High Commissioner's requests.

190. Thus, any pressure that the High Commissioner may have exerted in asking these senior officials to undertake an investigation or place the Director on administrative leave should not be understood as being the reason for their decisions. As a consequence, however questionable the High Commissioner's conduct may have been, it does not fall within the definition of abuse of authority.

1.3. The Chef de Cabinet of the Secretary-General

191. As with the High Commissioner, the conduct of the Chef de Cabinet comes under scrutiny because of her involvement in the organization of the high-level meeting on 20 March 2015. Although she did not personally attend the meeting, the Chef de Cabinet had contacted several of the participants, including the Director of the Ethics Office and the Under-Secretary-General for Internal Oversight Services, to request their participation in it. She had done so after consulting the High Commissioner.

192. On 10 March 2015, the Chef de Cabinet became aware that OIOIS was expecting to dismiss the allegation, described above, that the Director had leaked confidential information to another Member State.[281] Like the High Commissioner, she appears to have been concerned that the Director had an improper motive for sharing information with that Member State and was disappointed at the outcome of the OIOS investigation.[282]

193. When, on 19 March 2015, she communicated with the Director of the Ethics Office and the Under-Secretary-General for Internal Oversight Services, among others, the Chef de Cabinet knew that the High Commissioner was seeking advice on how to deal with the conduct of the Director of the Field Operations and Technical Cooperation Division in sharing the Sangaris notes with the French authorities.[283] She must also have known, because of her position of authority within the Office of the Secretary-General, that her request would most probably be complied with.

194. The gathering of such high-level officials in a meeting to discuss the conduct of the Director of the Field Operations and Technical Cooperation Division is disquieting. Essentially, the High Commissioner was approaching the meeting as a supervisor who was considering disciplining an employee or as a complainant in a possible investigation. In either case, it would have been apparent to the Chef de Cabinet that the participation of the Under-Secretary-General for Internal Oversight

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[281] E-mail from the Chef de Cabinet to the High Commissioner, 10 March 2015.

[282] E-mail from the Chef de Cabinet to the High Commissioner, 10 March 2015; e-mail between the Chef de Cabinet and the Under-Secretary-General for Internal Oversight Services, 13 March 2015.

[283] E-mails from the Chef de Cabinet to the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Assistant Secretary-General for Human Resources Management, 19 March 2015.

Services in the same meeting as the High Commissioner was likely to compromise her independence and that of her Office. Although it falls within the mandate of the Under-Secretary-General to provide advice to other senior officials, such advice cannot concern the details of an upcoming or pending case, because the Under-Secretary-General may be given information that will affect her perception of the Director's conduct and taint her objectivity.

195. The same is true with respect to the Director of the Ethics Office. The Chef de Cabinet could and should have known that the presence of the Director of the Office was sought in reference to the United Nations whistle-blower protection programme, not to give ethical advice. Consequently, she should have anticipated that the Director of the Office would be at risk of being placed in a conflict of interest by attending the meeting. Nevertheless, the Chef de Cabinet appears not to have hesitated to facilitate the meeting, without warning either the High Commissioner, the Under-Secretary-General for Internal Oversight Services or the Director of the Office that such a meeting could be problematic.

196. Consideration must also be given to the negative perception created by the Chef de Cabinet's role in facilitating such a high-level meeting. It not only raised justifiable doubts about the independence of OIOS and the Ethics Office, but also invited speculation that a conspiracy was afoot. With the benefit of hindsight, the decision to convene the high-level meeting appears to be ill considered. This does not in itself, however, rise to the level of an abuse of authority. The extent of the Chef de Cabinet's involvement, which is limited to convening a meeting of senior officials, is not sufficiently egregious to constitute an abuse of her position of authority. Since the first criterion is not met, the Panel does not need to examine the consequences of her involvement or the impact on the reputation of the Organization.

1.4. The Director of the Ethics Office

197. The Ethics Office was established in 2006 pursuant to a resolution of the General Assembly[284] and is tasked with five distinct mandates: to provide confidential advice to United Nations staff on ethical issues; to advise the Organization on policies within its area of expertise; to conduct ethics awareness-raising and education; to manage the United Nations financial disclosure programme; and to support and assist United Nations staff against retaliation for reporting misconduct (whistle-blower protection).[285] Like OIOS, in order to carry out these mandates appropriately, the Ethics Office must be independent and impartial and operate on a confidential and professional basis.[286]

198. As noted, the Director of the Ethics Office was invited to participate in the high-level meetings on 20 March and 8 April 2014. Her attendance was sought because of the possibility that the Director would claim that he was a whistle-blower. In such circumstances, he could be entitled to protection from retaliation as a whistle-blower and to assistance from the Office.[287]

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[284] See General Assembly resolution 60/248; see also ST/SGB/2005/22.

[285] See ST/SGB/2005/22, sects. 3.1, 3.5 and 3.6; interview; see also "About the Ethics Office" website, available from www.un.org/en/ethics/who.shtml.

[286] See ST/SGB/2005/22, sects. 3.1 (c), 3.3 and 3.4; and United Nations, "The Ethics Office: an introduction", November 2015; see also the Ethics Office "Main page" website, available from www.un.org/en/ethics/index.shtml; and ST/SGB/2007/11, sect. 1.2.

[287] Statement to the Panel.

199. When the Chef de Cabinet contacted the Director of the Ethics Office on 19 March 2015 to request her presence at the first meeting, she did not provide any details as to the reasons for the meeting.[288] In that context, the Director of the Office could have assumed that the High Commissioner needed confidential advice on ethics, which falls within her mandate.[289] However, it must have become apparent early in the meeting that what was really at issue was the High Commissioner's desire to take disciplinary action in respect of what he perceived to be misconduct on the part of the Director of the Field Operations and Technical Cooperation Division.

200. It is not within the mandate of the Ethics Office to participate in discussions with respect to the discipline of employees. The Office does not provide advice on decisions regarding employment or discipline.[290] Indeed, it was specifically created as a unit independent from management.[291] To maintain that independence, it cannot assist or be seen assisting superiors whose actions may amount to retaliation. The Director of the Office should act as a role model and maintain the highest standards of ethics. The independence of the Ethics Office from management and from the investigative function of OIOS should stand as a foundational principle. The Director of the Ethics Office should have realized that it would be difficult for her Office to carry out its role in an independent manner once she, as Director, had attended a high-level meeting at which a disciplinary strategy affecting a staff member had been discussed.

201. Furthermore, the High Commissioner was acting under the impression that the Director of the Field Operations and Technical Cooperation Division would claim protection as a whistle-blower, a responsibility which, as noted, falls within the mandate of the Ethics Office as manager of the protection-against-retaliation programme.[292] Whether the Director of the Division could reasonably claim to be a whistle-blower could be determinative in the decision of the High Commissioner to request an investigation. Therefore, it should have been evident to the Director of the Office early in the meeting that she would be made privy to information which conflicted with her responsibilities in respect of the whistle-blower protection programme. The Director of the Office should not participate in cases that are likely to be scrutinized by the Office under its whistle-blower protection mandate, or participate in the strategic discussions of a superior who might later be suspected of retaliating against the whistle-blower.

202. Overall, the Director of the Ethics Office should have realized that the meeting could be perceived as a conspiracy to flout the rights of the Director of the Field Operations and Technical Cooperation Division, and should have refused to participate. Furthermore, not only did the Director of the Office fail to address the potential risk of conflict of interest stemming from the 20 March meeting, but she agreed to participate in a second meeting, on 8 April 2015, to again discuss the conduct of the Director of the Division. Before the 8 April meeting, the Director of the

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[288] E-mail from the Chef de Cabinet to the Director of the Ethics Office of 19 March 2015.

[289] Interview; see ST/SGB/2005/22, sect. 3.1 (c).

[290] See United Nations, "The Ethics Office: an introduction", November 2015; see also "About the Ethics Office" website, available from www.un.org/en/ethics/what.shtml.

[291] See General Assembly resolution 60/1, para. 161 (d); A/69/332, para. 6; and United Nations, "The Ethics Office: an introduction", November 2015; see also the Ethics Office "Main page" website, available from www.un.org/en/ethics/index.shtml; and United Nations Dispute Tribunal, *Wasserstrom v. Secretary-General of the United Nations* (judgment No. UNDT/2012/092, 21 June 2012), paras. 23 (l) and 30.

[292] See ST/SGB/2005/22, sect. 3.1 (b).

Office had received and read statements from the Human Rights Officer, the High Commissioner, the Deputy High Commissioner and the Director of the Division. The purpose of the meeting was again to discuss the conduct of the Director of the Division, but with the benefit of information from the perspective of key actors.[293] That meeting was even more inappropriate than the previous one, and the Director of the Office did not have the excuse of not knowing in advance what exactly the High Commissioner sought. The Panel observes that as soon as the Director of the Office understood the purpose of the 20 March meeting, she should have recused herself and refused to participate in the 8 April meeting.

203. However, while the Director of the Ethics Office was in a potential conflict of interest, the Panel finds that it does not amount to an abuse of authority. The Director of the Office was not responsible for making any decision in relation to the allegations of misconduct against the Director of the Field Operations and Technical Cooperation Division, who did not seek any protection against retaliation. No conflict of interest actually materialized, and there was no misuse of her position of authority.

1.5. The Under-Secretary-General for Internal Oversight Services

204. Just as with the Director of the Ethics Office, the participation of the Under-Secretary-General for Internal Oversight Services in the meetings of 20 March and 8 April 2015 raises a red flag. The Panel finds that that, combined with the Under-Secretary-General's subsequent decision to order an investigation into the conduct of the Director of the Field Operations and Technical Cooperation Division in respect of the alleged leaking of the Sangaris notes, gives rise to a very real concern that her independence has been compromised. This in turn raises questions as to whether the independence and integrity of OIOS as an office has been undermined and whether the Under-Secretary-General abused her authority.

205. The importance of the independence of OIOS is confirmed in numerous General Assembly resolutions and cannot be overstated.[294] Operational independence is part of the formal structure of OIOS, and independence as a principle of procedural fairness is pivotal to the integrity of the Office's investigative role.[295] Both operational independence and independence as part of procedural fairness are therefore essential to the credibility of OIOS and vital to the preservation of the rights of staff being investigated.

206. As explained above, the Panel finds that the purpose of the high-level meetings held on 20 March and 8 April 2015 was to provide advice to the High Commissioner with respect to the conduct of the Director of the Field Operations and Technical Cooperation Division in transmitting the Sangaris notes to the French authorities. Given that purpose, the Under-Secretary-General for Internal Oversight Services

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[293] Statement to the Panel.

[294] See General Assembly resolution 48/218, para. 5 (a); ST/SGB/273, art. 2; and General Assembly resolutions 54/244, para. 18, 64/263, para. 9, and 69/253, paras. 4 and 5.

[295] See General Assembly resolution 59/287, p. 1 and para. 2; and United Nations Dispute Tribunal, *Marshall v. Secretary-General of the United Nations* (judgment No. UNDT/2011/205, 30 November 2011), para. 193 (c); see also OIOS, "Investigations Manual: provisional, pending promulgation of the revised ST/AI/371", 2015, p. 18, and OIOS, "Investigations Manual", March 2009, p. 18, both stating that OIOS investigators should "act with objectivity, disclose any actual or potential conflicts of interest, and recuse themselves from any involvement in the investigation if such a conflict exists", as well as OIOS, "Protocol: conflicts of interest", 1 May 2011, para. 7.

should have realized that her participation in the meetings could either actively undermine her independence or, at the very least, give rise to the appearance that she had compromised her independence and that of her Office. In particular, the active role that the High Commissioner — who, it should have been apparent, would be the likely complainant against the Director — played in convening the meetings should have caused her to approach them with great caution. Indeed, the Under-Secretary-General should have been aware of the purpose of the first meeting given the fact that the Chef de Cabinet, in writing to set up the meeting, had specifically linked it to the previous investigation that OIOS had undertaken into allegations that the Director had leaked confidential information to another Member State for his own personal benefit.[296]

207. To preserve her independence as a matter of procedural fairness, the Under-Secretary-General for Internal Oversight Services should have either declined to attend the meetings or, at the very least, excused herself once the subject matter of the Director's conduct had come up during the discussion. Her decision not to withdraw from the meetings raises the significant concern that the Under-Secretary-General would no longer, or could no longer, be perceived as impartial in decisions having an impact on the Director of the Field Operations and Technical Cooperation Division.

208. Procedural fairness requires not only that decision makers act independently, objectively and in good faith, but also that they be perceived as doing so. Instead of being cognizant of the risks associated with her actions, however, the Under-Secretary-General for Internal Oversight Services not only attended the first meeting, reviewed the statements collected subsequently to that meeting, and attended the second meeting, but also then took the uncommon step of deciding to advance the complaint into a full investigation conducted on her own and without ensuring that the decision had been made in a transparent manner or in any other way that would protect the appearance of independence.

209. There are several issues that arise from the manner in which this decision was made. First, as the United Nations Dispute Tribunal observed, it is indisputable that the Under-Secretary-General departed from the usual practices of her Office with respect to the decision to order the investigation by making this decision herself.[297] It is significant that the Under-Secretary-General has taken such an extraordinary step on only a few occasions, and that two of those cases concerned the Director of the Field Operations and Technical Cooperation Division.[298]

210. By contrast, OIOS policies provide that all reports of possible misconduct received by OIOS shall be "assessed through an intake process",[299] which requires a "methodical and consistent approach for receiving, recording, screening and assigning matters for investigations".[300] The manner in which the intake process occurs is, according to the Office's own procedures, "critical to ensuring transparency and

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[296] E-mail from the Chef de Cabinet to the Under-Secretary-General for Internal Oversight Services, 19 March 2015.

[297] See United Nations Dispute Tribunal, *Kompass v. Secretary-General of the United Nations* (order No. 139 (GVA/2915), 10 July 2015), para. 41; e-mails between the Under-Secretary-General for Internal Oversight Services and an OIOS staff member, 9 and 10 April 2015.

[298] Interview.

[299] OIOS, "Terms of reference: intake", art. 2.

[300] See OIOS, "Investigations Manual: provisional, pending promulgation of the revised ST/AI/371", 2015, p. 15; and OIOS, "Investigations Manual", March 2009, p. 15.

accountability during the investigation process".[301] A careful intake process is central to procedural fairness[302] and is central to the Office's overall system of accountability. In this case, the importance of the intake process and, in particular, of the decision to assign the matter for investigation is underscored by the fact that the High Commissioner could not ask for the Director to be placed on administrative suspension unless he was already under investigation.[303] This illustrates the serious consequences that the decision to investigate may entail in the United Nations.

211. Under current practice, the decision to investigate is made after rigorous assessment of the complaint to establish the basis for the investigation. It is left to the Director of the Investigations Division, who makes the determination on the recommendation of his Deputy.[304] Prior to the establishment of that practice, an intake committee was responsible for making such decisions.[305] Both the current and prior practices highlight the high level of consideration involved in the decision. While the current process delegates the decision to the Director of the Investigations Division, it nevertheless ensures that the decision maker is independent from the person presenting the recommendation to investigate. The Under-Secretary-General for Internal Oversight Services utilized neither of these two processes. Instead, on 9 April 2015, she made the determination on her own to assign the matter for investigation, without documented advice or independent review.

212. That the Under-Secretary-General for Internal Oversight Services made the decision to investigate within hours of receiving the High Commissioner's request to initiate an investigation — and apparently without applying the proper criteria — is further cause for alarm.[306] The Under-Secretary-General failed to ask obvious and important questions which should have been considered before any decision was made to advance the matter to investigation. For example, she could easily have questioned why the communication of the Sangaris notes to the French authorities was labelled a "leak" when the Director of the Field Operations and Technical Cooperation Division had explained that the reason that he had transmitted the notes was to stop the sexual abuse of the children;[307] and she could have asked whether the communication of the information had been concealed, as leaks generally are, when in fact it had occurred without any secrecy (the French Embassy had officially acknowledged the receipt of the notes in a letter sent to OHCHR).[308] Furthermore, she could have asked why the word "leak" was being used when there was a basis in OHCHR policies for the Director's decision to communicate the notes to the French authorities. In addition, the Under-Secretary-General could have examined why the alleged leak was being

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[301] OIOS, "Procedure: investigation intake", art. 2.

[302] See OIOS, "Investigations Manual: provisional, pending promulgation of the revised ST/AI/371", 2015, p. 15; and OIOS, "Investigations Manual", March 2009, p. 15.

[303] Technically, this is referred to as "administrative leave". However, it was effectively a suspension from employment.

[304] OIOS, "Procedure: investigation intake", art. 21.

[305] Statement to the Panel.

[306] E-mail from the Under-Secretary-General for Internal Oversight Services to the Director of the Ethics Office, copied to the High Commissioner and the Chef de Cabinet, 9 April 2015; e-mails from the Under-Secretary-General for Internal Oversight Services to OIOS staff, 9 April 2015.

[307] Statement of March 2015.

[308] Letter from the Permanent Representative of France to the United Nations Office and other international organizations in Geneva to OHCHR dated 30 July 2014 and received on 5 August 2014 by OHCHR.

treated as an urgent issue when the communication of the notes by the Director had been well known for more than seven months.

213. The Panel finds that at the stage of the intake process and of the assignment for investigation, numerous warnings were given to the Under-Secretary-General for Internal Oversight Services, which she disregarded in her eagerness to decide on the matter and move it forward to investigation. Given these circumstances, it is evident to the Panel that the Under-Secretary-General failed to meet her responsibility to conduct a careful and methodical examination of the circumstances before initiating an investigation. Instead, she relied on the information obtained prior to the opening of the intake process, in which the complainant had played a key role.

214. While the Under-Secretary-General for Internal Oversight Services has the discretionary authority to decide which matters to investigate, such discretion must be exercised in a manner that is consistent with the duty of fairness owed to the staff member. By participating in high-level meetings convened for the purpose of discussing the Director's case, and by disregarding the procedural protections provided by the investigation policies and inserting herself into the process, the Under-Secretary-General failed to preserve the appearance of objectivity and independence of her Office. Therefore, she failed to uphold the fundamental obligation of its independence. As a consequence, the Panel concludes that the first criterion for a finding of abuse of authority has been met; that is, the Under-Secretary-General's use of her position of authority was improper.

215. The Panel also finds, with respect to the second criterion, that the decision had a negative impact. There is now an open investigation into the Director's conduct. Further, without the ongoing investigation, he could not have been placed on administrative suspension. While the investigation itself is only a part of the United Nations disciplinary process, the very real negative consequences of the Under-Secretary-General's decisions for the Director's professional and personal life cannot be overlooked.

216. Further, the Panel finds that the conduct of the Under-Secretary-General had serious institutional consequences for OIOS itself. The Panel takes note that institutional struggles within OIOS predate the Under-Secretary-General's decisions regarding the Director of the Field Operations and Technical Cooperation Division and the transmittal of the Sangaris notes. However, procedural fairness rules and internal processes are established to ensure fairness, consistency and transparency in administrative decision-making. Decisions of senior officials which are perceived as breaches of fundamental rules necessarily have far-reaching consequences for the Organization.

217. Ultimately, the Panel concludes that, with regard to the first criterion, the actions and decisions of the Under-Secretary-General for Internal Oversight Services were improper and, with regard to the second, that they had a negative impact both on the Director of the Field Operations and Technical Cooperation Division, on OIOS and on the Organization. Therefore, her actions constitute an abuse of authority.

1.6. The Under-Secretary-General for Peacekeeping Operations

218. Two issues triggered the scrutiny of the Panel with respect to a potential abuse of authority by the Under-Secretary-General for Peacekeeping Operations. The Department of Peacekeeping Operations is, along with the Department of Field Support, responsible for the organization and operation of peacekeeping missions.

Therefore, it is involved in all aspects of the sexual abuse policies that have an impact on the organization and operation of missions.

219. The first issue arises from the statement by the Director of the Field Operations and Technical Cooperation Division that, during his meeting with the Deputy High Commissioner on 12 March 2015, she indicated that both the High Commissioner and the Under-Secretary-General for Peacekeeping Operations had requested his resignation.[309] The Deputy High Commissioner denies making reference to the Under-Secretary-General for Peacekeeping Operations, and the Under-Secretary-General denies having requested the Director's resignation. There is no evidence to corroborate the Director's statement. As a consequence, the Panel finds that there is insufficient evidence to link the Under-Secretary-General to the request for the Director's resignation and makes no finding of abuse of authority in this regard.

220. The second issue relates to the decision of the Department of Peacekeeping Operations to include troops in MINUSCA who had reportedly committed serious human rights violations when they had been part of the MISCA forces. Although some of the MISCA contingents were integrated into MINUSCA after the conduct underlying the allegations had occurred, the Panel is concerned that this decision effectively condoned egregious behaviour, including incidents which may amount to conflict-related sexual violence. This is precisely the type of decision that contributes significantly to the prevailing climate of impunity. The Under-Secretary-General for Peacekeeping Operations, as the Head of his department, is ultimately responsible for this decision — one which is indicative of how pervasive the climate of tolerance for sexual exploitation and abuse has become in the United Nations. In this regard, the Panel notes that during the course of the review, numerous allegations of serious human rights violations were reported in the media as having been committed by former MISCA contingents which had been rehatted as MINUSCA contingents.

221. However, while the decision may be symptomatic of a broader problem of tolerance of sexual violence committed by international troops — and is indicative of the climate of impunity in which the actions described in the allegations took place — the mandate of the Panel is to assess whether an abuse of authority has occurred in connection with the allegations. In this case, a causal relationship was not sufficiently established. As a consequence, the Panel finds that the first criterion for a finding of abuse of authority is not met.

1.7. The Senior Officer in the Executive Office of the Secretary-General

222. The facts surrounding the actions of the Senior Officer in the Executive Office of the Secretary-General are as follows. During the meeting held on 7 August 2014, the Director informed the Deputy High Commissioner that he had shared the Sangaris notes with the French authorities. Also during that meeting, it was agreed that the Executive Office should be informed about the transmission.[310] On 8 August, a staff member in the Office of the Deputy High Commissioner wrote to the New York Central African Republic desk officer in the Executive Office of the Secretary-

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[309] Statement of March 2015.

[310] Interviews; 1 May 2015 notes on the 7 August 2014 meeting between the Director and the Deputy High Commissioner and follow-up.

General, but that person was on leave.[311] The staff member was referred to the Senior Officer in the Executive Office, who was both covering the Central African Republic desk and covering for several other staff members who were either absent or on leave. The staff member in the Office of the Deputy High Commissioner explained to the Senior Officer in the Executive Office the nature of the allegations and the commitment of the French authorities to follow up on accountability.[312] The Senior Officer undertook to inform the Deputy Secretary-General and later confirmed in writing that he had done so.[313] In a subsequent oral communication, however, the Senior Officer conceded that he had not, in fact, informed the Deputy Secretary-General about the allegations.[314]

223. Whether the conduct of the Senior Officer in the Executive Office of the Secretary-General rises to the level of abuse of authority is debatable. That the Senior Officer was overwhelmed by the work required to replace other staff is no excuse for misleading the staff member of the Deputy High Commissioner as to his course of action. The Deputy Secretary-General should have been informed of the allegations; at the very least, the Senior Officer should have advised the staff member that he had not had the opportunity to inform the Deputy Secretary-General. However, the Senior Officer's poor judgment is not the reason for the harm caused to the victims and to the United Nations. Rather, it is simply a reflection of a larger institutional problem: the failure at some levels of the United Nations to take seriously reports of sexual abuse by peacekeepers, and an unwillingness to shoulder the responsibility to respond to such allegations. It is yet another instance of the fragmentation of responsibilities which allows staff to rely on others to take action.

224. Without coming to a conclusion with regard to the first criterion of the abuse of authority test, the Panel finds that the actions of the Senior Officer in the Executive Office of the Secretary-General were not the reason for the additional harm caused by the lack of adequate response to the allegations and that he cannot be blamed for additional damage to the reputation of the United Nations. As a result, the Panel does not make any finding of abuse of authority in the case of the Senior Officer.

2. Institutional struggles

225. While the senior officials mentioned above had specific responsibilities in responding to the allegations, the Panel also examined the response of various United Nations offices and agencies which played a role in the unfolding events.

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[311] Interviews; 1 May 2015 notes on the 7 August 2014 meeting between the Director and the Deputy High Commissioner and follow-up; e-mail from staff of the Deputy High Commissioner to staff of the Executive Office of the Secretary-General, 8 August 2014.

[312] Interviews; 1 May 2015 notes on the 7 August 2014 meeting between the Director and the Deputy High Commissioner and follow-up; e-mail from staff of the Deputy High Commissioner to the Senior Officer in the Executive Office of the Secretary-General, 8 August 2014.

[313] Interview; 1 May 2015 notes on the 7 August 2014 meeting between the Director and the Deputy High Commissioner and follow-up; e-mail from the Senior Officer in the Executive Office of the Secretary-General to staff of the Deputy High Commissioner, 9 August 2014.

[314] Interview; e-mail from the Senior Officer in the Executive Office of the Secretary-General to senior United Nations staff, 8 May 2015; Executive Office of the Secretary-General Senior Officer's timeline.

2.1. Executive Office of the Secretary-General

226. The Charter of the United Nations describes the Secretary-General as the "chief administrative officer of the Organization".[315] In that context, his Office should not generally become involved in the minutiae of events that occur in United Nations missions. At the same time, however, there need to be mechanisms to convey to the Executive Office of the Secretary-General information about important and urgent issues as they arise, such as credible reports of conflict-related sexual violations by international peacekeeping forces. In this case, efforts to communicate the information in an informal manner to the Deputy Secretary-General failed. It is evident that information of such importance cannot be left to informal mechanisms. As suggested above, the Panel recommends the creation of a Coordination Unit, housed within OHCHR, to ensure that allegations of sexual exploitation and abuse are followed up diligently, not only at the individual level, but also at the institutional level.

227. The Panel further notes that, in reacting to media articles about the allegations, senior United Nations officials in the Executive Office of the Secretary-General have continued to emphasize the distinction between troops under United Nations command and troops not under United Nations command. This distinction is not only inconsistent with the General Assembly resolutions that give priority to the protection of human rights, but also with the application of the United Nations human rights mandate and the Human Rights up Front initiative. This shortcoming can and should be corrected by acknowledging the applicability of the human rights policy to peacekeeping forces not under United Nations command.

2.2. Office of Legal Affairs

228. The Panel has commented above on the cumbersome and time-consuming process adopted by the Office of Legal Affairs in addressing the participation of United Nations staff in the French investigation. The Office is the institution within the Organization which advises the Secretary-General and the United Nations at large on issues of immunity. Therefore, the approach taken by the Office has an impact on the whole Organization. As indicated below, the Panel recommends measures to reduce the time and complexity of the process of assessing requests for immunity. This requires a change of organizational culture within the Office to internalize the Secretary-General's commitment to integrate human rights into the day-to-day conduct of all United Nations staff.

2.3. Department of Peacekeeping Operations

229. The Panel is aware of the difficult conditions under which the Department of Peacekeeping Operations had to deploy troops on an urgent basis to the Central African Republic. Nevertheless, many interviewees indicated that the screening measures were inadequate, resulting in the integration into MINUSCA of contingents that had committed serious human rights violations.

230. The deployment by the United Nations of troops who have committed, or are at risk of committing, serious human rights violations undermines the very purpose of peacekeeping missions. The United Nations must adopt rigorous screening and vetting measures so that troops who present a risk to the population are not

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[315] See Charter of the United Nations, art. 97.

deployed. Strict vetting and screening mechanisms have a short- and a long-term impact: recidivists are excluded and potential perpetrators are deterred.

231. However, vetting and screening are not solely the responsibility of the United Nations. Troop-contributing countries should implement risk assessment mechanisms prior to deployment and certify that individual soldiers have not committed, or are not likely to commit, human rights violations. Ensuring that troops who are deployed do not present unacceptable risk requires a joint effort by the United Nations and the troop-contributing countries.

232. In order to enable its own screening and vetting, the United Nations should consistently record all complaints of human rights violations in a centralized database. In that regard, the Human Rights Database housed within OHCHR is already intended to log all human rights violations committed by United Nations staff, related personnel and all peacekeepers. The Database should be placed under the oversight of the Coordination Unit. Further, the Department of Peacekeeping Operations should be obliged to screen all peacekeeping troops against the Human Rights Database when making decisions on troop selection.

233. In sum, the United Nations must engage with the troop-contributing countries in pursuing the shared goal of reducing risk in deployment, in keeping with its human rights mandate.

2.4. Office of Internal Oversight Services

234. In reviewing the actions and omissions of the Under-Secretary-General for Internal Oversight Services, the Panel was inundated with submissions and comments revealing profound struggles within OIOS. Participants in the review raised concerns about the substantive work of the Investigations Division as well as the independence of the Office.

235. Concerns expressed with respect to the substantive work of OIOS relate to the skills and resources that are needed to conduct investigations into sexual violence, which will ultimately lay the basis for criminal prosecutions. Evidence required for criminal proceedings needs to be gathered in accordance with internationally accepted standards. The United Nations must ensure that OIOS has the resources to meet those standards.

236. On the subject of the independence of OIOS, the Panel builds on the recent recommendation of the Independent Audit Advisory Committee that a "holistic review" of OIOS be conducted.[316] In addition, as discussed earlier, the Panel observed confusion which threatens the independence of OIOS and of other United Nations offices which have independence as a core aspect of their mandate. This problem indicates that senior officials heading those offices require guidance in order to ensure that the purposes of those offices are not subverted.

237. Finally, in the course of the review, the Panel was made aware of deep divisions within OIOS. These profound difficulties far exceed the Panel's mandate. The Panel is aware that the struggles predate the investigation into the Director's conduct. However, it must be underscored that respect on the part of senior officials for the rules and processes that govern the work of staff members sets the tone from the top. As a corollary, departure from established rules and processes can seriously exacerbate existing divisions and struggles.

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[316] See A/70/284, para. 65.

Part V. Improving the United Nations response to conflict-related sexual exploitation and abuse by peacekeepers

238. In this part, the Panel sets out the specific problems that it has identified in the Organization's current approach to allegations of sexual violence by peacekeepers, and makes recommendations for improving United Nations responses when allegations occur.

1. Acknowledging that conflict-related sexual violence is a human rights violation

1.1. Refocusing the lens on conflict-related sexual violence by peacekeepers

239. As discussed in part III above, there are two policy frameworks through which the United Nations can address conflict-related sexual violence by peacekeepers: the SEA policies and the human rights policy framework. The two perspectives can and must be harmonized to better respond where violations occur. This shift in approach has important implications for the manner in which the United Nations responds to the needs of victims and conceives of its obligation to report, investigate and follow up on allegations. In particular, viewing such abuses through a human rights lens makes clear that the United Nations has an obligation to respond to all instances of sexual violence by international peacekeeping troops. The most significant step that the United Nations can take to improve its responses to allegations of sexual exploitation and abuse by peacekeepers, therefore, is to acknowledge that abuses by peacekeepers are a form of conflict-related sexual violence that needs to be addressed under the United Nations human rights policies.

Recommendation 1

Acknowledge that sexual exploitation and abuse by peacekeepers, whether or not the alleged perpetrator is under United Nations command, is a form of conflict-related sexual violence to be addressed under the United Nations human rights policies.

1.2. Addressing the fragmentation of responsibility

240. One of the most glaring problems that the Panel observed in the course of the review was the tendency within the Organization to disown its responsibility for dealing with sexual exploitation and abuse by peacekeeping forces. There is currently no single entity or person responsible for coordinating or implementing response actions to conflict-related sexual violence by peacekeepers. Responsibility and accountability are fragmented among multiple actors, agencies and offices spread across multiple locations. This makes it all too easy for individual staff members to assume that someone else will take action, thereby justifying their own inaction. For example, in the case of the allegations, the Head of the Human Rights and Justice Section and the Special Representative for the Central African Republic relied on UNICEF for protection; UNICEF waited for the Special Representative for the Central African Republic to take action; the Special Representative for Children and Armed Conflict took the position that she had insufficient information and did not follow up; the Central African Republic desk was content with distributing documents but was not proactive; the Senior Officer in the Executive Office of the

Secretary-General took for granted that someone else would deal with the allegations; and so forth. A system in which everyone is meant to be responsible for addressing sexual exploitation and abuse has produced a leadership vacuum in which no one is ultimately responsible or accountable. This is a major impediment to responding effectively to allegations of sexual violence by peacekeepers and to preventing new abuses from occurring.

241. The Panel therefore supports the creation of a Coordination Unit to direct and coordinate the response of the United Nations to allegations of sexual violence by peacekeepers. The Panel is aware that the Secretary-General has already planned to establish an analogous unit. However, the Panel is of the view that this unit should be hosted in OHCHR rather than in the Department of Field Support in order to underscore that such abuses are serious violations of human rights and should not be reduced to a disciplinary issue. Requesting OHCHR to oversee and coordinate the response to allegations of conflict-related sexual violence is consistent with its human rights mandate and expertise. Because of the serious impact of conflict-related sexual violence on the United Nations as a whole, the Coordination Unit should report directly to the High Commissioner. The Unit should be responsible for:

- Developing a unified policy on conflict-related sexual violence perpetrated by peacekeepers, and guiding and advising United Nations staff on this policy;
- Facilitating the full and efficient cooperation of United Nations agencies with responsible national authorities in responding to allegations;
- Following up with national authorities in the troop-contributing country and host countries to ensure that accountability measures, including reporting, investigation and prosecution processes, are timely and effective and that information about accountability measures are shared with victims and the affected community;
- Ensuring that the Human Rights Database is used consistently and is up to date with respect to allegations and follow-up.

242. At the operational level, the Coordination Unit should be supported by a working group of technical and legal experts on sexual violence. The working group should be tasked with developing, as a priority, standard operating procedures with a view to harmonizing United Nations policies on conflict-related sexual violence and promoting accountability. Given the need for involving troop-contributing countries, representatives of troop-contributing countries should also be involved in the working group.

243. Finally, the Panel has already observed that many of the recommendations resulting from previous expert inquiries have never been implemented. The Coordination Unit should therefore be tasked with implementing the recommendations of the Panel to ensure concrete change going forward.

Recommendation 2

Create a Coordination Unit in OHCHR reporting directly to the High Commissioner for Human Rights to oversee and coordinate responses to conflict-related sexual violence, including:

- **Monitoring, reporting and following up on allegations of sexual abuse;**

- **Analysing data with a view to tracking trends and practices for the purpose of improving prevention and accountability;**
- **Following up on the implementation of the Panel's recommendations.**

Recommendation 3

Create a working group to support the Coordination Unit made up of experts (including specialists skilled in addressing sexual violence by international forces) and representatives of troop-contributing countries. The working group should:

- **Develop a single policy harmonizing the SEA and human rights policies;**
- **Develop processes promoting criminal accountability for sexual violence.**

2. Reporting and investigation

2.1. Making reporting requirements on sexual violence by peacekeepers mandatory

244. One of the most significant failures that the Panel observed in the events that unfolded after the Allegations had come to light is that, despite clear policy guidance,[317] the allegations were not reported in a timely manner to senior officials in OHCHR.

245. To fulfil its responsibility with respect to civilians, allegations of sexual exploitation and abuse by international peacekeeping forces must be reported to the Coordination Unit and to the appropriate authorities within the United Nations. Reporting is necessary to alert responsible authorities within the United Nations and, in some cases, the relevant troop-contributing country. This is because the obligation to report is closely intertwined with the obligation of the United Nations to investigate and follow up on allegations of human rights violations. If allegations are not reported, these important obligations cannot be triggered. Moreover, the reporting requirement must be made mandatory to prevent extraneous considerations, such as the nationality of the troops, from interfering with the decision-making process. Consistent with the importance of this initial stage, reporting must also be made without delay to ensure both the protection of victims and the preservation of evidence.

246. Reports of allegations of sexual violence should be made to the head of the human rights component of the mission or to the staff member's reporting officer. In the case of sexual violence against children, the report should also be made to the child protection officer as well as UNICEF and the Special Representative for Children and Armed Conflict. In the case of sexual violence against adults, reports should be made to the Special Representative of the Secretary-General on Sexual Violence in Conflict. In all cases, reports should be made to the Coordination Unit.

Recommendation 4

Require mandatory and immediate reporting of all allegations of sexual violence to:

- **The head of the human rights component in the field or mission, or the reporting officer;**

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[317] See ST/SGB/2003/13, sect. 3 (e).

- **In the case of sexual violence against children, the child protection officer, as well as UNICEF and the Special Representative of the Secretary-General for Children and Armed Conflict; and, in the case of sexual violence against adults, the Special Representative of the Secretary-General on Sexual Violence in Conflict;**
- **The Coordination Unit.**

2.2. Establishing a specialized investigation team

247. If perpetrators are to be held accountable, investigations into their conduct must meet international standards. Best practices suggest that not only must the evidence be gathered as soon as possible and in a way that respects the particular needs of the victims and witnesses, but it must also be preserved in a manner that will ultimately pass the scrutiny of a judicial process. Accordingly, investigations should be conducted by trained staff. Not all troop-contributing countries have access to such specialized personnel, nor will such expertise necessarily reside within United Nations missions.

248. Given these considerations, the Panel supports the recommendation of the Zeid report to establish a professional investigative team with access to professionals who have experience in investigating acts of sexual violence, especially those involving children. The team should have access to experts who are able to provide advice on the forensic requirements and standards of proof for criminal proceedings. The team should be capable of rapid deployment so that it can be available to missions as soon as an allegation comes to light and the human rights component of the mission has been able to make a preliminary determination that the allegation is credible. In particular, the team should be trained in the steps that must be taken before interviews are conducted to ensure that investigators obtain the consent of victims and witnesses to the disclosure of their information for the purposes of accountability proceedings.

Recommendation 5

Establish, under the authority of the Coordination Unit, a professional investigative team available for immediate deployment when conflict-related sexual violence by peacekeepers is reported.

3. Protection of victims and other civilians

3.1. Balancing confidentiality with accountability

249. The principle of confidentiality is central to the United Nations mandate to protect civilians. Confidentiality as a tool of protection is woven into the operational guidelines of United Nations agencies and departments engaged in human rights, the rule of law, the protection of civilians and even humanitarian assistance. United Nations policies emphasize that sharing information that has been provided under conditions of confidentiality, without first obtaining the individual's informed consent to the disclosure, could endanger the security of the individual or occasion a violation of his or her human rights.

250. While informed consent should be obtained, the United Nations should also emphasize that sharing information with national authorities may also be important for the security of individuals and for the protection of their human rights. The sharing of information may be necessary to hold perpetrators to account and to allow for effective prosecution.

251. In many cases, it will be possible to protect individuals without sharing confidential information. Each case must be examined on its own merits. As discussed above, in the case of the allegations, this delicate balance between confidentiality and accountability was not achieved. Confidentiality was used as a basis for not cooperating with French investigators, despite the fact that the confidential information had been disclosed months earlier. Confidentiality became an end in itself instead of a means to protect civilians. Similarly, the prioritization of confidentiality at the expense of protection turns the concept on its head. The principle of confidentiality should not be used as a shield to prevent United Nations staff from taking appropriate and necessary action to protect civilians.

Recommendation 6

Task the working group with reviewing United Nations policies dealing with confidentiality in order to establish a proper balance among informed consent, protection and accountability.

4. The right of victims to a remedy

252. As a matter of principle, victims of conflict-related sexual violence should be compensated. In an armed conflict, however, individual remedies are often illusory. Furthermore, in many countries emerging from conflict, domestic judicial systems can be dysfunctional. Recourse against foreign perpetrators in their own domestic courts is most often not feasible, as victims do not have the resources to pursue accountability and to obtain a remedy.

253. In recognition of the difficulty faced by victims in accessing a remedy in such circumstances, victims should have access to the common trust fund proposed by the Secretary-General. The trust fund is not intended to compensate individual victims in the form of reparations, but it would assist in the provision of the specialized services that victims of sexual violence require. The trust fund proposed by the Secretary-General does not currently extend to victims of peacekeepers not under United Nations command. As detailed above, there is no principled basis for making this distinction. In the Panel's view, the trust fund should be available to all victims of sexual violence by peacekeepers, regardless of whether the perpetrator is under United Nations command.

254. The Panel acknowledges that the creation of the trust fund is just a small step towards remedying the harm resulting from conflict-related violence. Nevertheless, this would contribute to the recognition that the United Nations policies on sexual exploitation and abuse are inclusive and harmonized under a common human rights denominator, and could provide meaningful assistance to some victims of sexual violence.

Recommendation 7

Establish a trust fund to provide specialized services to victims of conflict-related sexual violence.

5. Prevention through individual accountability

255. One of the most important ways in which the United Nations can prevent future instances of sexual exploitation and abuse by peacekeepers is by holding those who sexually abuse civilians accountable for their crimes. It is only by seeing that such crimes will be met with accountability measures, including criminal prosecution, that individual troops will begin to take the zero-tolerance policy seriously. At the same time, making accountability measures more transparent for victims will help to ensure that communities do not lose faith in the integrity of United Nations military missions. In this section, the Panel presents a number of mechanisms to improve accountability.

256. Several accountability provisions are already integrated into memorandums of understanding governing relationships between the United Nations and troops under its command. For example, troop-contributing countries are required to undertake to inform the United Nations of any actions taken to substantiate and address allegations. However, the Panel is not aware of any such accountability provisions in agreements between the United Nations and troops not under its command. From a human rights perspective, this gap is hardly justifiable.

257. The United Nations should bridge the gap between the rules governing troop-contributing countries under its command and those applying to troops not under its command by negotiating provisions into its agreements with all troop-contributing countries that are consistent with the obligations under the existing SEA policies and human rights framework. Troop-contributing countries should join in the fight against impunity by agreeing to include provisions ensuring accountability. More specifically, agreements between the United Nations and troop-contributing countries should include robust measures facilitating the investigation and prosecution of crimes of sexual violence by the relevant troop-contributing country, the United Nations or the host State, and enabling victims, the local population and the United Nations to know whether and how the alleged perpetrators are held accountable. While control over the accountability processes will largely remain in the hands of the troop-contributing countries, the United Nations should play an active role in supporting them to conduct appropriate and sensitive investigations, to preserve evidence for use in judicial processes and to communicate back to victims and the local population the outcome of legal proceedings. Recommendations with respect to accountability provisions are discussed further in the next section.

5.1. Revisiting the prosecution process

258. It is well established that accountability processes currently in place for the criminal prosecution of individual peacekeepers for crimes of sexual violence are perceived to be ineffectual. A significant impediment to successful prosecution has been the agreement of the United Nations to date that a troop-contributing country retains exclusive jurisdiction to prosecute crimes perpetrated by its troops under its domestic law. These agreements are generally built into memorandums of

understanding signed by the United Nations and the troop-contributing countries.[318] This means that where the troop-contributing countries choose not to exercise their jurisdiction, or engage in flawed processes which may put victims and witnesses at risk, or intentionally interfere with the process so as to exonerate the accused, the hands of the United Nations and the host country are tied. This problem was noted in particular in relation to another set of human rights violations in the Central African Republic, where the International Commission of Inquiry on the Central African Republic emphasized that "the existing arrangements for conducting inquiries and reporting on the results do not appear to provide any assurance that justice will be done, or be seen to be done, and fails to satisfy the rights of the family members of the victims to an effective remedy. In addition to calling for each of the relevant forces to take appropriate steps in this regard, [the Commission] considers that it is imperative for the Security Council to address the issues raised by these allegations by putting in place new arrangements to guide such cases in the future".[319]

259. In September 2016, the Secretary-General endorsed the Zeid report's recommendation for the use of on-site court martial proceedings in host countries.[320] This would enable more victims and members of the affected community to participate and see justice being done. Concerns remain, however, that a judicial process conducted by the troop-contributing country's own military may not be sufficiently independent[321] or that it might lack the expertise required to respond to the unique needs of victims of sexual abuse, children in particular.[322] Troop-contributing countries may also oppose the conduct of such proceedings in the host country rather than in their own domestic courts. Given this range of concerns, it seems likely that the proposal will continue to face significant opposition from troop-contributing countries and victims' advocates alike. Moreover, even if the political will can be found to support on-site court proceedings, consideration will also need to be given to ensuring that these proceedings are open to the public, except where legitimate protection concerns are demonstrated (such as in the case of child victims).

260. Given these challenges, alternative mechanisms must be considered in order to ensure respect for human rights and due process in the context of the investigations and prosecutions, and to allow victims and affected communities greater access to efforts to hold perpetrators accountable.

261. In order to reduce the number of instances in which the troop-contributing country does not follow up on allegations (or is perceived not to have followed up), the United Nations should consider building on the model status-of-forces agreement adopted by the North Atlantic Treaty Organization (NATO).[323] Where the

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[318] See United Nations, "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), art. 5; and A/61/19 (Part III), annex, art. 7 quinquiens, para. 1.

[319] See S/2014/928, para. 574.

[320] See A/70/357, para. 120; see also United Nations, "Secretary-General tells troop contributors no one with past record of abuse can ever serve United Nations, outlining plans for victim trust fund", 17 September 2015, available from www.un.org/press/en/2015/sgsm17081.doc.htm.

[321] See OIOS, "Evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations", evaluation report (assignment No. IED-15-001), 15 May 2015, para. 25.

[322] Ibid.; note that investigation standards varied greatly, with some "considered very poor".

[323] NATO, Agreement between the parties to the North Atlantic Treaty regarding the status of their forces, 19 June 1951, available from www.nato.int/cps/en/natohq/official_texts_17265.htm.

NATO status-of-forces agreement applies, primary or subsidiary jurisdiction is established over selected crimes committed in the host State, depending on the specific nature of the offence. If the country that has primary jurisdiction chooses not to exercise it, then the other country may choose to exercise its subsidiary jurisdiction.[324] The NATO status-of-forces agreement also provides for mutual assistance between the troop-contributing country and the host State in carrying out the investigation and sharing information.[325]

262. This approach is particularly apposite given the gap in impunity that arises as a result of the unwillingness or inability of some troop-contributing countries to exercise their jurisdiction in a timely manner. Following on the NATO status-of-forces agreement model, a troop-contributing country could be given primary, but not exclusive, jurisdiction where one of its troops is alleged to have committed sexual violence in the host State in contravention of the host State's domestic laws. However, agreements with troop-contributing countries should provide that, if the troop-contributing country fails to take prompt action to investigate the reported violations and prosecute suspects within a specified period, it would be deemed to have waived its primary jurisdiction. Host countries — with, if necessary, the support of the United Nations — would then be free to exercise subordinate jurisdiction over the crimes committed within their territory under the host State's domestic law. Consistent with its human rights mandate, the United Nations should monitor proceedings in either the troop-contributing country or the host State to ensure compliance with prevailing international standards, particularly with respect to the protection of victims of sexual violence.

263. Modifications to the agreements with troops not under United Nations command are critical to any effort to reduce sexual exploitation and abuse by peacekeepers going forward. Sexual violence in peacekeeping operations will not end until each and every soldier understands that such crimes will be met with legal consequences. This requires a coordinated effort by the United Nations, troop-contributing countries and, when possible, host countries, to ensure that perpetrators are prosecuted in a timely and effective way by the troop-contributing country or, in default of which, the host country.

Recommendation 8

Negotiate with troop-contributing countries provisions ensuring prosecution, including by granting host countries subsidiary jurisdiction to prosecute crimes of sexual violence by peacekeepers.

5.2. Increasing investigative and prosecutorial transparency

264. Even where prosecutions occur, the proceedings generally take place far from where the crimes were committed, and victims and affected communities are not routinely apprised either of efforts to hold perpetrators accountable or of the outcome of the legal proceedings in the troop's countries of origin.[326] Without any information about steps taken to hold perpetrators accountable, however, it will

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[324] Ibid., art. VII (3).

[325] Ibid., art. VII (6) (a).

[326] See OIOS, "Evaluation of the enforcement and remedial assistance efforts for sexual exploitation and abuse by the United Nations and related personnel in peacekeeping operations", evaluation report (assignment No. IED-15-001), 15 May 2015, para. 25.

generally appear to victims and the local population that the perpetrators have not faced any consequences for their actions. This in turn erodes the trust of the local community in peacekeepers and in the United Nations. Further, it sends a clear message to other potential perpetrators in the country that such violations will not be taken very seriously.

265. Moreover, in circumstances in which victims face continuing protection issues and/or have been relocated for their own security, victims need information about the outcome of any judicial proceedings in order to know whether the security risks to them remain.

266. In connection with the allegations, for example, the victims and the local community in the Central African Republic have not been fully or regularly apprised of the accountability measures that the Government of France has undertaken. The result is a silence which suggests inaction; this in turn creates an appearance of impunity that discourages victims from bringing forward allegations in the future, and emboldens predators.[327]

267. In the context of international prosecutions, mechanisms already exist to address issues of territorial jurisdiction. *Commissions rogatoires*, mutual legal assistance agreements[328] and ad hoc arrangements such as the one between Chad and Senegal for the Extraordinary African Chambers[329] not only may make the collection of evidence in the host country easier (thereby furthering the ultimate goal of accountability), but also will create greater transparency for victims and local populations who can see that justice is being pursued. The United Nations and the troop-contributing countries can and should build on such mechanisms.

268. In the Panel's view, agreements with international forces should include an agreement not only that the troop-contributing country will exercise its jurisdiction to prosecute or allow for subsidiary jurisdiction, as under the NATO status-of-forces agreement model, but also that it will periodically disclose information on the measures that have been implemented to investigate or prosecute the alleged perpetrators. These provisions would allow the United Nations, victims and the broader public to monitor the efforts that have been deployed and the progress made with respect to accountability.

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[327] United Nations, "Secretary-General tells troop contributors no one with past record of abuse can ever serve United Nations, outlining plans for victim trust fund, 17 September 2015, available from www.un.org/press/en/2015/sgsm17081.doc.htm.

[328] For example, see General Assembly resolution 55/25, dated 15 November 2000, adopting the United Nations Convention against Transnational Organized Crime, art. 18; Inter-American Convention on Mutual Assistance in Criminal Matters With Related Optional Protocol, 23 May 1992; European Convention on Mutual Assistance in Criminal Matters, 20 April 1959; Council of Europe Convention against Sexual Exploitation and Sexual Abuse, 25 October 2007, art. 38; Economic Community of West African States, Convention A/P.1/7/92 on Mutual Assistance in Criminal Matters, 29 July 1992. See also General Assembly resolution 68/105, para. 5 (a), (b), (c) and (d). With respect to civil and commercial matters, see European Union, Council regulation No. 1206/2001 of 28 May 2001 on cooperation between courts of Member States in the "Taking of evidence in civil or commercial matters", art. 17; and Organization of American States, Inter-American Convention on Letters Rogatory, 30 January 1975.

[329] Senegal-Chad Judicial Cooperation Agreement, *Accord de cooperation judiciaire entre la République du Sénégal et la République du Tchad pour la poursuite des crimes internationaux commis au Tchad durant la période du 7 juin 1982 au 1er décembre 1990*, 3 May 2013.

269. While a model cooperation agreement that is uniform with respect to all troop-contributing countries and host countries may be difficult to adopt in view of the diversity of legal systems, provisions requiring such cooperation could be included in agreements between the United Nations and troop-contributing countries prior to deployment.[330] The United Nations should facilitate and encourage these cooperative and mutual legal assistance provisions by supporting troop-contributing countries with reasonable logistical and other practical means to improve transparency in accountability, in accordance with international standards.[331]

270. Regardless of whether criminal proceedings are conducted. stronger mechanisms need to be put in place to ensure effective follow-up on accountability measures, particularly outreach to victims and affected communities.

271. Finally, the Secretary-General has called on troop-contributing countries to promptly notify the United Nations on the progress of investigations, including the outcomes of cases.[332] Yet, no protocol has been developed or proposed for advising victims of the outcomes of troop-contributing country investigations or prosecutions. These follow-up measures should be facilitated by the Coordination Unit, which is responsible for coordinating the United Nations response to allegations of sexual violence by peacekeepers.[333]

Recommendation 9

Negotiate the inclusion in agreements with troop-contributing countries of provisions ensuring transparency and cooperation in accountability processes.

5.3. Immunity in the context of accountability

272. When a troop-contributing country initiates proceedings with a view to prosecuting sexual offences by one of its peacekeeping troops, the United Nations should facilitate these processes.

273. United Nations officials are immune from legal process "in respect of words spoken or written and all acts performed by them in their official capacity".[334] However, the Secretary-General has the authority and duty to waive immunity where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.[335] Given the legal issues involved in requests for the waiver of privileges and immunities under the Convention on the Privileges and Immunities of the United Nations, all requests for

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[330] For example, see United Nations, "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), sects. 15.1-15.3.

[331] Ibid., sect. 15.2 ("missions shall liaise with competent authorities within mission areas, including host countries, with a view to facilitating the conduct of the investigation by the concerned troop-contributing country"). See also General Assembly resolution 68/105, para. 4.

[332] See United Nations, "Secretary-General tells troop contributors no one with past record of abuse can ever serve United Nations, outlining plans for victim trust fund, SG/SM17081-PKO/520, 17 September 2015. Available from www.un.org/press/en/2015/sgsm17081.doc.htm. This is also required under the United Nations "Standard operating procedure on implementation of amendments on conduct and discipline in the model memorandum of understanding", Ref. 2011.01 (1 March 2011), paras. 16.1 and 16.3.

[333] See A/69/779, para. 74.

[334] See United Nations, *Treaty Series*, vol. 1, No. 4, sect. 18 (a).

[335] Ibid., sects. 14, 20 and 23.

the waiver of immunity are reviewed by the Office of Legal Affairs before a final determination is made by the Secretary-General.[336] According to the Office, there can be no general advance waiver of privileges and immunities, even in defined circumstances, because each inquiry is fact-specific.[337]

274. The Secretary-General has announced that "[i]f, after proper investigation, there is evidence to support allegations of sexual exploitation or sexual abuse [committed by United Nations staff], these cases may, upon consultation with the Office of Legal Affairs, be referred to national authorities for criminal prosecution".[338] Of particular relevance is the fact that the United Nations has an obligation to cooperate at all times with the legal authorities of Member States to "prevent the occurrence of any abuse in connection with the privileges [and] immunities" accorded to its officials.[339] In other words, there is no immunity for United Nations officials and experts on mission who commit sexual crimes because these crimes are necessarily outside the scope of any official functions.[340]

275. In the Panel's view, the same kind of approach should be adopted for participation by United Nations officials and experts in investigations and prosecutions in which such participation will advance accountability. Indeed, the Office of Legal Affairs has recognized that, "where the United Nations itself has called for the prosecution of the accused persons, and a successful prosecution may depend on the United Nations allowing its personnel to provide evidence, the Organization should be willing to lift the immunity of such personnel to enable them to testify, as appropriate".[341] Privileges and immunities should not be a bar to United Nations officials and experts on mission testifying as witnesses to crimes of sexual violence, particularly where the United Nations itself has referred alleged incidents of sexual violence to the responsible national authorities for investigation or prosecution.[342]

276. Consistent with these principles, in such cases, the Office of Legal Affairs should adopt an approach to immunity that presumes the cooperation and active participation of United Nations staff in the accountability process. Immunity should stand only in circumstances in which the United Nations has determined that the disclosure of information by staff members or witnesses could result in a security threat to the victims or witnesses, or in which the victim did not provide his or her informed consent to the disclosure of the information.

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[336] See A/63/260, para. 67.

[337] *United Nations Juridical Yearbook 1973*, pp. 166 and 167; *United Nations Juridical Yearbook 1964*, pp. 260 and 261; and *United Nations Juridical Yearbook 1976*, pp. 234-236.

[338] See ST/SGB/2003/13, sect. 5.

[339] See United Nations, *Treaty Series*, vol. 1, No. 4, sect. 21. See also *United Nations Juridical Yearbook 2006*, (United Nations publication, Sales No. E.09.V.1), pp. 441 and 444 (discussing this provision).

[340] See A/63/260, para. 66.

[341] See *United Nations Juridical Yearbook 2008* (United Nations publication, Sales No. E.10.V.5), p. 405.

[342] See *United Nations Juridical Yearbook 1976*, pp. 234-236 ("immunities granted to diplomatic personnel or officials of international obligations have not been a bar to such persons testifying voluntary as witnesses").

Recommendation 10

Adopt an approach to immunity that presumes the cooperation and active participation of United Nations staff in accountability processes.

6. Prevention through vetting and screening

277. When peacekeepers who commit sexual exploitation and abuse escape without serious consequences, other would-be predators become more emboldened. Ensuring meaningful consequences for individual perpetrators is therefore critical to the longer-term goal of deterrence.

278. In particular, soldiers and commanders deployed on peacekeeping missions must understand that those who engage in acts of sexual exploitation and abuse will face serious consequences for their actions. To this end, existing vetting or screening mechanisms need to be strengthened and consistently implemented. Predeployment induction programmes should emphasize the serious consequences that will confront any soldier or commander who engages in prohibited acts or who fails to report suspected instances of sexual exploitation and abuse by his colleagues, subordinates or supervisors.

6.1. Stronger predeployment risk assessments, screenings and certifications

279. In order to minimize the risk that peacekeeping troops who receive United Nations support will commit human rights violations, the United Nations utilizes several screening mechanisms, one of which is the human rights due diligence policy . The policy helps to screen out troops who demonstrate an unacceptable risk that they will commit a human rights violation in the future, including sexual violence against children.[343]

280. The human rights due diligence policy, while useful, is limited for two reasons. First, the policy applies only to troops who receive support from the United Nations or who are engaged in joint operations. Therefore, not all troops will be measured against the policy's screening mechanism. Second, even where the policy is implemented, it does not appear to be rigorously applied. For example, the Panel was advised that many human rights violations had been committed by MISCA troops in the Central African Republic, but the Department of Peacekeeping Operations nevertheless rehatted the MISCA troops and integrated them into the MINUSCA forces.[344] In addition, the Panel was advised that numerous additional violations had been reported in the Central African Republic since the reporting of the allegations that are the subject of the present report, implicating peacekeepers.[345] The Panel is aware that many of the MISCA violations had not been followed up as of October 2015.

281. Given the gravity of the situation and the fact that human rights violations and, more particularly, sexual exploitation and abuse may be committed by troops either under United Nations or not under United Nations command, the mechanisms created to reduce the risk of human rights violations and imposed by the human

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[343] See A/67/775, paras. 14-17 and 23.

[344] Code cable 1231 from the Department of Field Support and the Department of Peacekeeping Operations, 2 June 2015; OHCHR summary table, 18 September 2015.

[345] OHCHR summary table, 18 September 2015.

rights due diligence policy should be integrated as minimum standards whenever peacekeepers are deployed, whether or not the troops are under direct United Nations command or are in receipt of United Nations support. This should be accomplished by negotiating agreements with troop-contributing countries to implement screening and vetting mechanisms that are at least equivalent to the standards set out in the policy. Accordingly, screening mechanisms should be implemented for all troops who are authorized to intervene in a country.

282. Leadership is also critical to deterring future incidents of sexual violence. Commanders of all peacekeeping troops should be required to certify that they are not aware of any pending or past offences related to sexual violence involving members of their contingent. Likewise, they should be required to disclose any incidents of which they are aware and to undertake to promptly report any suspected allegations of sexual abuse that may occur during their deployment. These certifications will help impress upon signatories the seriousness of their undertakings. Commanders of peacekeeping contingents must also understand that the failure to address sexual exploitation and abuse by their troops — including by taking appropriate steps to prevent or punish subordinates who they know or have reason to suspect will commit or have committed acts of sexual violence — is misconduct that may also constitute a crime for which they will be held accountable.

283. Finally, as indicated above, significant problems remain with respect to how the United Nations tracks violations of human rights by peacekeeping troops. OHCHR manages the Human Rights Database, which is intended to trace all allegations of human rights violations brought to its attention.[346] If consistently utilized, the Database should contain information on allegations of sexual violence by foreign forces regardless of their affiliation. The collection and sharing of data are crucial to the screening of troops. Yet, the Panel was informed that the Human Rights Database is not consistently utilized.[347] This must be addressed. A comprehensive, up-to-date Database is an essential precondition for the United Nations to be able to properly screen troops for deployment in a peacekeeping mission.

Recommendation 11

Negotiate with all troop-contributing countries provisions for screening troops that are minimally equivalent to the standards described in the human rights due diligence policy.

Recommendation 12

Maintain a comprehensive, up-to-date Human Rights Database hosted by OHCHR.

7. Strengthening the independence of United Nations officers and agencies

284. In part IV above, on the response to the allegations by the United Nations in Geneva and New York, the Panel examined interactions between senior officials. The meetings that took place between senior officials in March and April 2015, and the problems that arose out of these meetings, have been described. The Panel notes

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[346] See Joint Policy, para. 57.

[347] Interviews.

the concerns of staff who participated in the review and who perceived these meetings to be "conspiratorial". The Panel has already described the meetings as disquieting and has found that the participation of some senior officials in the meetings put them at risk of conflict of interest or appeared to compromise both their independence and the independence of their offices.

285. While the United Nations has established certain independent offices in an effort to strengthen due process for its staff, the requirements that are inherent to due process — such as maintaining both actual independence and objectivity, and the appearance of such — seem to have been lost. In this regard, the Panel finds to be particularly apposite the comments of the Independent Audit Advisory Committee, which acts as an oversight body for OIOS, in its 2015 report:

> The absence of agreed upon and clear guidance and protocols can result in OIOS inadvertently compromising its independence and/or understandable concerns about OIOS actions or statements on the part of key stakeholders, including Member States.[348]

286. The Independent Audit Advisory Committee has recommended the development of "guidelines and protocols to be used when advising management and making statements about situations that may be subject to audit and investigations".[349] The Panel supports this recommendation, but is of the view that it should extend beyond OIOS. Other offices in the United Nations require independence at the heart of their mandate. Moreover, other senior officials in the Organization may also require guidance on how to interact with such offices as OIOS and the Ethics Office, which must remain at arm's length from the rest of the Organization.

287. As the Panel has commented, independence of decision-making is essential to the integrity of certain offices of the United Nations, including OIOS and the Ethics Office. This independence should be respected not only by the senior officers who work within those entities, but also by other senior officials within the Organization. Accordingly, the United Nations should develop guidelines and protocols to govern the interactions of senior officials with those offices that require independence in the execution of their mandate.

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[348] See A/70/284, para. 56.

[349] Ibid., para. 57.

Part VI. Conclusion

288. In September 2015, the Secretary-General addressed the problem of sexual abuse by troop- and police-contributing countries and emphasized that successful peacekeeping missions cannot be fielded unless sexual exploitation and abuse is brought to an end. He appealed to all troop- and police-contributing countries, reminding them that he cannot stop sexual abuse without their support. In making his remarks, he referred to the allegations at the heart of the present review. Significantly, the Secretary-General did not distinguish between the Sangaris forces and troops under United Nations command. This statement already marks a change in the Organization's approach to sexual exploitation and abuse by international peacekeeping forces.

289. This change in culture must now extend to the rest of the United Nations and to troop-contributing countries. When international forces involved in peacekeeping missions victimize civilians, it is a fundamental violation of trust — whether or not they are wearing blue helmets. Both the United Nations and its Member States must shoulder the responsibility to ensure that victims of abuse are properly treated, that those responsible are brought to account and that the Organization takes concrete action to prevent future violations. In the absence of such a response, the integrity and credibility of the United Nations and of its Member States are put in serious jeopardy.

290. The abuses that occurred in the Central African Republic in 2014, and the failure of the United Nations to adequately respond, are the product of a number of underlying, systemic problems: a culture of impunity which turned a blind eye to the criminal actions of individual troops; a fragmented bureaucracy in which staff were concerned with shunting off responsibility and punishing information leaks, rather than responding to the abuses or protecting the victims; and a policy framework which failed to acknowledge the Organization's responsibilities where the alleged perpetrators were not under United Nations command. Fundamentally, United Nations staff and agencies failed to recognize that the abuses at the heart of the allegations are human rights violations and therefore fall within the scope of the United Nations human rights mandate. The result was an abdication of responsibility to address the harm caused by the abuse, either to the individual victims or to the Organization as a whole.

291. An organization which holds as its core mandate the protection of civilians and the promotion of human rights cannot tolerate this kind of abuse if it wants to maintain its integrity and credibility in the long term. Peacekeeping missions in particular have a distinguished record of protecting civilians in circumstances of extreme violence and conflict, and allowing both Governments and populations to rebuild and move forward. The value of such goals and the challenges inherent in achieving them must not be underestimated. But the persistence of serious crimes against vulnerable local populations, perpetrated by some of those in charge of their protection, put at risk the very sustainability of peacekeeping missions in the long term.

292. Deliberate and effective action is needed to achieve the United Nations policy of zero tolerance. The present report, together with all of the other reports that have been produced over the years, offers practical, tangible tools to prevent the sexual exploitation and abuse of the most vulnerable members of our society, to protect and care for victims and to empower Member States to hold the peacekeepers who perpetrate sexual crimes accountable. Some of these steps may require the dedication of resources or new legal mechanisms. But to effectively confront sexual exploitation and abuse by peacekeepers, creative solutions are required. Now it is up to the United Nations and Member States to implement the necessary changes.

Annex I

Chronology of events relating to the allegations

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I. Investigation and reporting of the allegations

A. Presence of the United Nations and France in the Central African Republic

1. On 5 December 2013, the Security Council authorized the deployment of a United Nations special political mission called the United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA) as well as the deployment of the French Sangaris forces to assist the African Union's African-led International Support Mission in the Central African Republic (MISCA) military forces. On 10 April 2014, the Council, by its resolution 2149 (2014), established the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) to take over the functions of BINUCA and to operate as a peacekeeping mission. By the same resolution, the Council authorized French forces to "use all necessary means to provide operational support to elements of MINUSCA".

B. Investigation by the Human Rights and Justice Section and the United Nations Children's Fund into the allegations

2. On 1 April 2014, a Human Rights Officer was deployed on temporary assignment to the Central African Republic. At the end of April 2014, the Officer visited the M'Poko camp for internally displaced persons, located near the airport in Bangui. The Officer met with the non-governmental organization (NGO) in charge of the M'Poko camp and received information that international military forces had engaged in acts of sexual abuse against children in the camp. The Officer scheduled a meeting with the source of the information, the head of a local NGO working in the M'Poko camp (the "M'Poko NGO") on 13 May 2014, during which he provided the Officer with documentation to support the allegations.

3. The Human Rights Officer reported the allegations to the Head of the Human Rights and Justice Section of MINUSCA, who authorized her to investigate the matter further and decided to coordinate the investigation with the United Nations Children's Fund (UNICEF). Around the same time, UNICEF received a separate report about allegations of sexual abuse of children at the M'Poko camp. In response to the request by the Head of the Human Rights and Justice Section, UNICEF assigned two child protection officers to assist in the investigation.

4. Between 19 May 2014 and 24 June 2014, the Human Rights Officer and the UNICEF child protection officers interviewed six children between the ages of 8 and 13. All six children gave detailed descriptions of sexual assault ("the allegations"). The allegations implicated troops from the French Sangaris forces in most of the incidents. After each interview, the Officer prepared a written summary of her notes and transmitted them to the Head of the Human Rights and Justice Section. The resulting compilation of notes from all six interviews is referred to as "the Sangaris notes".

5. The Human Rights Officer indicates that sometime in May 2014, while the investigation was ongoing, she advised several senior Sangaris forces officers that she had received credible information about sexual assaults allegedly committed by Sangaris soldiers, and recommended preventive measures to reduce the risk of

further violations. While the Officer did not document the meeting at the time, she provided an e-mail statement to this effect on 8 June 2015 and repeated the information publicly in a media report broadcast on 2 October 2015 on France 2.

C. Preliminary findings of the Human Rights and Justice Section on human rights violations by international forces

6. While the investigation into the allegations was ongoing, the Office of the United Nations High Commissioner for Human Rights (OHCHR) requested the Human Rights and Justice Section to urgently submit a report on human rights violations committed by the forces under the command of MISCA for submission to the Department of Peacekeeping Operations in connection with their planned integration into MINUSCA.

7. On 28 May 2014, OHCHR pressured the Human Rights and Justice Section to submit the report it had previously requested by close of business on 29 May, so that it could be sent to the Department of Peacekeeping Operations on 30 May at the latest. The Section compiled the information in a document entitled "Investigation into allegations of human rights abuses by international peacekeeping forces in the Central African Republic: preliminary findings of a work in progress" ("preliminary findings"). Although the Sangaris forces were not part of MISCA, the Section included in the preliminary findings information that it had received about the allegations from the Human Rights Officer's first two interviews (the only interviews concluded to date). On 29 May 2014, the Section staff member who was compiling the information submitted the preliminary findings for approval to the Officer-in-Charge of the Section with a copy to the Head of the Section, noting that the report was urgently needed by close of business (New York time) that day, and that the contents were very confidential.

8. The Department of Peacekeeping Operations meeting on rehatting took place in New York on 29 May 2014. At the time of the meeting, apparently neither OHCHR nor the Department had received a copy of the preliminary findings. After internal consultation, the Geneva office of OHCHR decided to provide its own human rights analysis of MISCA contingents. The OHCHR human rights analysis was compiled from existing information on file and included allegations of human rights abuses perpetrated by some MISCA contingents.

9. On 30 May 2014, the Human Rights and Justice Section sent the preliminary findings to the OHCHR Central African Republic desk in Geneva. The record does not reveal any further action by the Central African Republic desk in relation to the preliminary findings.

10. On 1 June 2014, the Human Rights and Justice Section submitted a copy of the preliminary findings to the Special Representative of the Secretary-General for the Central African Republic with the warning that the allegations were very sensitive and that they should be treated with confidentiality. The record does not reveal any further action by the Special Representative in relation to the allegations contained in the preliminary findings.

D. Human Rights Officer's submission of the Sangaris notes to her supervisors

11. On 26 June 2014, the Human Rights Officer submitted what she described as the "final" version of the Sangaris notes to the Head of the Human Rights and Justice Section. The notes are six pages long and contain summaries of the six interviews she conducted, along with UNICEF colleagues, with children who alleged that they had either been subjected to sexual violence or witnessed the sexual abuse of other children. These internal notes include the names of victims, witnesses and colleagues, as well as identifying features of some of the alleged perpetrators. While described as a final document, the Sangaris notes were final only in the sense that they were the Officer's compilation of her interview notes submitted at the conclusion of her temporary deployment to Bangui.

12. On 26 June 2014, the Human Rights Officer copied her message containing the Sangaris notes to a colleague in the OHCHR Geneva office without informing the Head of the Human Rights and Justice Section. (Although the Officer provided a statement in March 2015 identifying the date of the message to her colleagues as 14 July 2014, this date is not supported by the e-mail correspondence provided to the Panel. In addition, in her March 2015 statement, she indicates that she also sent the Sangaris notes to New York. However, none of the individuals to whom the e-mail was addressed appear to have been based in New York.) On the following day, 27 June 2014, the Officer's colleague in Geneva forwarded the Sangaris notes to four other Geneva-based staff.

13. Before leaving Bangui, the Human Rights Officer handed over to a UNICEF colleague the documents she had received from the M'Poko NGO that had initially alerted her to the allegations. Versions as to what should be done with the documents differ. While the Officer indicates that she asked for the investigation to be continued, the UNICEF colleague says he was left a message asking to return the documents in a sealed envelope to the Head of the M'Poko NGO, which he did.

E. Report by the Human Rights and Justice Section dated 17 July 2014

14. The head of the Human Rights and Justice Section included a redacted summary of the Sangaris notes in a consolidated report that contained allegations of human rights violations committed by other foreign forces in the Central African Republic. He transmitted a copy of this consolidated report to the Special Representative for the Central African Republic and OHCHR on 17 July 2014.

15. On 25 July 2014, the OHCHR Geneva office provided the Head of the Human Rights and Justice Section with comments on the draft 17 July report for incorporation into the final version. However, he never submitted the revised report to OHCHR, and consequently it was never cleared. He subsequently explained that he had stopped the clearance process when he had learned that the French authorities were already aware of the allegations.

F. Action plan of the United Nations Children's Fund

16. On 5 July 2014, the UNICEF child protection office in the Central African Republic notified the UNICEF Country Representative about the allegations. The Country Representative responded that he had raised the issue with the Special Representative for the Central African Republic. The Country Representative also informed colleagues in the UNICEF regional office and New York of the allegations. Two UNICEF staff members were assigned to review the evidence so that UNICEF could decide what follow-up was needed, including any request for further investigation and judicial process.

17. On 7 July 2014, upon the UNICEF referral, a local NGO with which UNICEF had an agreement to provide legal and psychological support met with nine child victims for a total of two hours. This group of children included five of the children who had been interviewed by the Human Rights Officer.

18. On 10 July 2014, UNICEF officials in New York, Geneva and Dakar participated in a conference call to discuss the allegations.

19. They agreed that one of the UNICEF Deputy Executive Directors needed to be apprised of the allegations right away, highlighting that both UNICEF and MINUSCA had already investigated the allegations. In addition, they recommended that one of the Deputy Executive Directors be delegated to discuss the issue with the Special Representative for Children and Armed Conflict.

20. On 16 July 2014, one of the UNICEF Deputy Executive Directors briefed the Special Representative for Children and Armed Conflict on the allegations. The Special Representative undertook to inform the Permanent Mission of France to the United Nations in New York.

21. On 17 July 2014, the UNICEF Country Representative advised the Special Representative for the Central African Republic that UNICEF had received allegations of sexual abuse perpetrated against children by members of the Sangaris forces in January and February 2014. UNICEF advised that the children were receiving appropriate psychological and medical services, and requested a meeting with the Special Representative to address the matter further.

II. Notification provided to France

A. Notification provided by the Human Rights Officer

22. As noted, the Human Rights Officer indicates that she advised several senior officers of the Sangaris forces of allegations of sexual abuse by French military personnel during the month of May 2014, and recommended preventive measures to reduce the risk of further violations.

B. Notification provided by the Special Representative of the Secretary-General for Children and Armed Conflict

23. According to documentation from June 2015, staff in the Office of the Special Representative for Children and Armed Conflict contacted the Permanent Mission

of France to the United Nations in New York in July 2014 and were informed that France's new Permanent Representative had not yet arrived in New York and that the Deputy Permanent Representative was out of the office. When the Deputy Permanent Representative returned to the office on 31 July 2014, the Special Representative discussed the allegations with him and asked for action to be taken. The next day, the Deputy Permanent Representative confirmed that civilian and military investigations had been initiated.

C. Notification provided by the Director and transmission of the Sangaris notes

24. The Director of the Field Operations and Technical Cooperation Division received the Sangaris notes from the Head of the OHCHR Peace Missions Support and Rapid Response Section (the Panel was not provided with evidence determining the date of receipt by the Director). On 23 July 2014, the Director discussed the allegations with the Deputy Permanent Representative of France to the United Nations Office and other international organizations in Geneva on the margins of a special session of the Human Rights Council.

25. According to a statement that he provided in March 2015 to the Director of the Ethics Office, the Director of the Field Operations and Technical Cooperation Division was later requested by the Permanent Mission of France to the United Nations Office and other international organizations in Geneva to transmit a copy of the Sangaris notes, which he did. The Panel received no documentation establishing the precise date when the Director handed over the Sangaris notes to French authorities.

26. On 30 July 2014, the Permanent Representative of France to the United Nations Office and other international organizations in Geneva sent a letter to the Director of the Field Operations and Technical Cooperation Division, thanking him for bringing the allegations to his Government's attention and informing him of the immediate decision to refer the matter to French judicial authorities. In the same letter, the Permanent Representative informed the Director that a military command investigation of a disciplinary nature had also been opened. The OHCHR Registry received this letter on 5 August 2014 and electronically forwarded a copy of it to the Director and three other OHCHR officials on the same day.

III. United Nations response and interaction with French investigation

A. Human Rights and Justice Section response to French investigators and release of Sangaris notes

27. According to the Head of the Human Rights and Justice Section, on 4 August 2014, two French investigators contacted staff in his office and stated that they were investigating allegations of sexual abuse allegedly perpetrated by elements of the Sangaris forces. The investigators advised that the French authorities had received the Sangaris notes from the Director of the Field Operations and Technical Cooperation Division.

28. On 4 August 2014, the Head of the Human Rights and Justice Section wrote to the Director to inform him that the French investigators were in Bangui seeking to interview staff as a result of receiving an unredacted report that the Director of the Field Operations and Technical Cooperation Division had transmitted to them.

29. On 5 August 2015, the Director of the Field Operations and Technical Cooperation Division confirmed that he had informed the French authorities of the allegations (although he noted that he had communicated the information "orally and informally", not that he had shared the unredacted Sangaris notes). The Director also suggested that the Head of the Human Rights and Justice Section cooperate with the French investigators. On the same day, the Director forwarded a copy of the letter of the Permanent Mission of France of 30 July 2014 to the Head of the Section, asking him to share it with the Special Representative for the Central African Republic. In a subsequent exchange on the same day, the Director offered to communicate with the Permanent Mission of France in case of difficulties. Eventually, the Head of the Section informed the French investigators that they should submit their requests for a meeting and documents through formal channels.

30. On 5 August 2014, the Human Rights Officer reported to the Head of the Human Rights and Justice Section that she, too, had been contacted by telephone on 4 August 2014 by French investigators, who had said that French authorities had a copy of the Sangaris notes and wanted to interview her. The Officer sought guidance as to whether she should accept the request for an interview. She was advised to request that the French investigators make a formal request for cooperation.

31. On 6 August 2014, the Special Representative for the Central African Republic directed the Head of the Human Rights and Justice Section to prepare a memorandum and a code cable, which the Head of the Section did on 7 August 2014, with a view to informing the High Commissioner and the Under-Secretary-General for Peacekeeping Operations in New York. The memorandum summarized the Section's investigation into the Allegations, as well as the decision made by the Section not to focus only on these violations but, instead, to produce a broader report capturing other abuses committed by international forces in the Central African Republic. According to the memorandum, the report was now finalized and would be submitted to mission leadership in "due course". Lastly, the memorandum recounted the Director's release of the Sangaris notes. The draft cable was sent to the Office of the Special Representative for the Central African Republic, but was never finalized.

B. Deputy High Commissioner briefed by the Director

32. On 7 August 2014, the Director briefed the Deputy High Commissioner about the allegations and his transmission of the Sangaris notes to the French authorities. The Director also indicated that the French authorities were willing to investigate. In addition, he provided the Deputy High Commissioner with a hard copy of the Sangaris notes. The Director and the Deputy High Commissioner discussed whether United Nations Headquarters in New York should be informed of the allegations and decided that the Executive Office of the Secretary-General should be advised. Given the sensitive nature of the Sangaris notes, they decided that the notes should not be shared in writing with the Executive Office, but that their content would be conveyed verbally.

C. Office of the United Nations High Commissioner for Human Rights notifies the Executive Office of the Secretary-General of the allegations and French investigation

33. Subsequent to the 7 August 2014 briefing, on 8 August 2014, a staff member in the Deputy High Commissioner's Office conveyed information about the nature of the allegations and France's willingness to investigate the matter to a colleague in the Executive Office of the Secretary-General. The Deputy High Commissioner's Office also provided the colleague in the Executive Office with a copy of the letter of the Permanent Representative of France of 30 July 2014 to the Director. This message and attachment were forwarded to four other colleagues in the Executive Office.

34. The staff member of the Executive Office of the Secretary-General undertook to convey this information to the Deputy Secretary-General and later confirmed by e-mail that he had done so. In fact, however, he failed to inform the Deputy Secretary-General about the allegations or the French investigation.

D. Response by the United Nations Children's Fund to French investigators and outreach to the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic

35. On 3 August 2014, French investigators contacted one of the UNICEF national staff members who had participated in the original interviews with the children, informed her that they had a copy of the Sangaris notes and requested a meeting with her. The staff member declined to meet with the investigators and referred them to the UNICEF child protection office in the Central African Republic. On 6 August 2014, the UNICEF Deputy Representative and a UNICEF child protection officer met with the French investigator.

36. On 6 August 2014, UNICEF notified the Special Representative for the Central African Republic that French investigators had contacted its staff. UNICEF sought the support of the Special Representative to ensure the security of victims and their families. The Special Representative did not respond to this communication.

37. UNICEF, in a letter dated 8 August 2014, formally responded to the request of the French investigators to interview UNICEF personnel by directing them to send a written request for cooperation to the UNICEF legal counsel in New York.

E. Response by the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic to the request by the United Nations Children's Fund for engagement

38. On 7 August 2014, subsequent to the receipt of the UNICEF letter, the Special Representative for the Central African Republic reminded the Head of the Human Rights and Justice Section that he had requested the day before that a code cable be prepared on this matter, and directed MINUSCA staff to contact the legal office in New York.

39. Approximately one month later, on 3 September 2014, the Special Representative for the Central African Republic followed up on his request for a code cable and memorandum about the allegations. A MINUSCA staff member responded that the Head of the Human Rights and Justice Section had submitted the requested code cable and memorandum on 8 August 2014, but she had not yet had a chance to review it, and promised to do so before 8 September 2014. It does not appear that the draft cable was ever sent.

F. United Nations staff immunity

40. On 21 August 2014, a French investigator contacted the Human Rights Officer again, this time by e-mail, to request that she participate in an interview. The French investigator was asked to submit a formal request to United Nations officials for consideration.

41. Using formal channels — which entailed going through the Permanent Mission of France and the United Nations, including their respective senior officials and legal offices — took weeks for each round of communication. Finally, in July 2015, the Secretary-General waived the Human Rights Officer's immunity and agreed to transmit the unredacted Sangaris notes.

IV. United Nations internal investigations of alleged leaks

A. Parallel investigation into the transmission of confidential information to a Member State

42. In parallel with the French investigation into the allegations (but completely unrelated), information came to light regarding the unauthorized sharing of OHCHR internal discussions to another Member State. On 28 October 2014, OHCHR requested that the Under-Secretary-General for Internal Oversight Services open an investigation into the possible involvement of the Director of the Field Operations and Technical Cooperation Division in this alleged leak of confidential information. The next day, the Under-Secretary-General approved the request to open a formal investigation into the matter.

43. On 10 March 2015, the High Commissioner was informed that the allegations would probably be found to be unsubstantiated. On 2 June 2015, the Office of International Oversight Services (OIOS) formally closed its investigation without making any finding of misconduct against the Director of the Field Operations and Technical Cooperation Division or any other individual.

B. High Commissioner's discovery of the Director's role in the transmission of the Sangaris notes

44. On 6 March 2015, OHCHR staff informed the High Commissioner that, during a conversation with the Human Rights Officer regarding the French investigation, they had learned that French investigators had told the Officer that the Sangaris notes had been transmitted by the Director of the Field Operations and Technical Cooperation Division.

45. On 11 March 2015, the day after learning that the allegations against the Director of the Field Operations and Technical Cooperation Division in relation to the leak to the other Member State would probably be found to be unsubstantiated, the High Commissioner asked the Deputy High Commissioner to discuss with the Director his conduct with respect to the transmission of the Sangaris notes. The Deputy High Commissioner met with the Director on 12 March 2015. During their meeting, the Deputy High Commissioner told the Director that the High Commissioner wanted him to resign on the basis of his handling of the Sangaris notes. The Director refused to resign, stating that his actions were driven by the need to stop the violations as soon as possible and were consistent with the United Nations zero-tolerance policy.

46. The Director also alleges that the Deputy High Commissioner told him that the Under-Secretary-General for Peacekeeping Operations had also requested his resignation. However, both the Deputy High Commissioner and the Under-Secretary-General specifically deny this allegation, and there is no evidence to substantiate it.

47. The next day, the Deputy High Commissioner informed the High Commissioner that the Director of the Field Operations and Technical Cooperation Division had admitted that he had disclosed the unredacted Sangaris notes to the French authorities. The High Commissioner determined that, given the seriousness of the situation, it would be best to consult other senior colleagues at the upcoming Secretary-General's retreat in Turin, Italy.

C. High-level meetings and request for investigation

48. The Secretary-General's Turin retreat took place on 19 and 20 March 2015. On 20 March, the High Commissioner, with the support of the Chef de Cabinet of the Secretary-General, convened a meeting on the margins of the meeting of senior officials to review the conduct of the Director of the Field Operations and Technical Cooperation Division. In attendance at that meeting were, in addition to the High Commissioner, the Deputy High Commissioner, the Assistant Secretary-General for Human Rights, the Under-Secretary-General for Internal Oversight Services, the Director of the Ethics Office and the Assistant Secretary-General for Human Resources Management. During the meeting, it became evident that the facts were not sufficiently clear to allow the High Commissioner and other senior officials to understand how events had unfolded and what course of action should be taken. It was decided to request statements on the sequence of events from those involved. All of the statements were submitted to the Director of the Ethics Office, who determined that significant discrepancies remained. A subsequent meeting involving, among others, the High Commissioner, the Under-Secretary-General for Internal Oversight Services and the Director of the Ethics Office was held on 8 April 2015 to discuss the same topic.

49. On 9 April 2015, the High Commissioner requested from the Under-Secretary-General for Internal Oversight Services that the Director of the Field Operations and Technical Cooperation Division be investigated in connection with the transmission of the Sangaris notes. Within hours of receiving the request, the Under-Secretary-General ordered the investigation. Later that day, the Director of the Ethics Office, who was not yet aware of the High Commissioner's request for an investigation,

recommended that the Director of the Field Operations and Technical Cooperation Division be approached to clarify the circumstances surrounding his decision to release the Sangaris notes. The High Commissioner responded by advising the Director of the Office and other participants in the Turin meeting that he had already sent a formal request to OIOS to open an investigation into the release of the Sangaris notes and had requested that the Director of the Division be placed on administrative leave effective 17 April 2015.

D. Initiation of an internal investigation against the Director

50. On 9 April 2015, the Under-Secretary-General for Internal Oversight Services ordered the investigation into the Director's conduct without following any of the established OIOS review processes.

51. On 17 April 2015, in accordance with the High Commissioner's request to delay the Director's suspension while he was away, the United Nations Office at Geneva Division of Administration served the Director of the Field Operations and Technical Cooperation Division with notice that he was being placed on administrative leave immediately.

52. On 5 May 2015, the United Nations Dispute Tribunal suspended the administrative leave at the Director's request. The investigation is ongoing as at the time of the review.

E. Protection of children

53. On 29 April 2015, the British newspaper *The Guardian* released an article on the allegations and the aftermath of the transmission of the Sangaris notes to the French authorities. Media coverage expanded thereafter.

54. In May 2015, after media had drawn attention to the children, UNICEF followed up with the children and contracted for additional services to relocate them while providing them with housing, clothing and schooling. These services were to be reviewed on 30 November 2015.

55. On 7 May 2015, the French Prosecutor of the High Court of Paris issued a press release giving details on the military and civilian investigations launched by French authorities and on the exchanges between the United Nations and the Government of France concerning immunity.

56. In connection with the ongoing French judicial proceedings, French authorities conducted interviews with the children who had initially reported the allegations to the Human Rights Officer at the French Embassy in the Central African Republic from 3 to 13 June 2015. The local NGO with which UNICEF has a partnership agreement provided legal assistance to the children in connection with these interviews.

57. On 2 October 2015, a news report aired on France 2 which included video footage from Bangui and interviews with a number of individuals, including the Human Rights Officer, who reiterated that she had notified the several officers of the Sangaris forces in May 2014.

Annex II

Terms of reference for an external independent review of the United Nations response to allegations of sexual exploitation and abuse and other serious crimes by members of foreign military forces not under United Nations command in the Central African Republic

Background

1. The Secretary-General is deeply concerned by the serious allegations of sexual exploitation and abuse and other serious crimes in the Central African Republic by members of foreign military forces not under the command of the United Nations (the "allegations") and the United Nations system's own response to the allegations. Without prejudice to the primary responsibility of the Governments concerned to ensure the criminal accountability of their military personnel who are under their exclusive criminal jurisdiction, the Secretary-General has decided to appoint an external independent panel to review how the United Nations, including its separately administered funds and programmes and other subsidiary organs, responded to such allegations and to make recommendations concerning how the United Nations should respond to allegations in the future that may raise similar issues, including allegations involving United Nations and related personnel, host State forces or non-State actors in the Central African Republic (the "external review").

Composition of the panel

2. The external review shall be conducted by a panel composed of three members, one of them appointed as Chair. Should the panel require external consultants to assist it with its work, the United Nations shall promptly engage such consultants in accordance with United Nations regulations and rules. The consultants shall be under the substantive authority of the panel.

Scope of the external review

3. The panel shall gather, review and assess the facts and circumstances regarding the manner in which the United Nations responded to the allegations, including any action taken or that should have been taken, bearing in mind the interests of the alleged victims and due process rights of those against whom allegations are made. The external review shall include:

(a) A description of the procedures in place at the time in the Central African Republic and in the United Nations generally to respond to the allegations, including, but not limited to, procedures relating to prevention, investigation, victim protection and informing appropriate authorities of States or regional organizations for judicial or other responses;

(b) An assessment of the adequacy of such procedures in the Central African Republic and in the United Nations generally under the various mandates, including those of peacekeeping missions, special political missions, the Office of the United Nations High Commissioner for Human Rights and other relevant human rights entities;

(c) An assessment of the actions taken, including whether such actions were in accordance with applicable procedures;

(d) An assessment as to whether, at any stage, there was any incident of abuse of authority by senior officials in connection with the allegations, including in connection with the communication of the allegations to one or more third parties, taking into account the procedures applicable to protection from retaliation and abuses of authority;

(e) Recommendations as to what steps can be taken to ensure that the Organization deals effectively and efficiently with future allegations that may raise similar issues. These recommendations shall take into account, as appropriate, considerations of capacity, resources and other constraints.

4. The allegations arise in the context of the conduct of members of foreign military forces not under the command of the United Nations. Allegations of sexual exploitation and abuse and other serious crimes by United Nations and related personnel, including military personnel under the unified command and operational control of the United Nations, are addressed through separate procedures.[a] If the panel, in the course of the external review, becomes aware of shortcomings in the content or the implementation of existing procedures to address allegations of sexual exploitation and abuse and other serious crimes against United Nations and related personnel, including military personnel under the unified command and operational control of the United Nations, it shall make any recommendations it deems appropriate. Similarly, if the panel, in the course of the external review, becomes aware of shortcomings in the content or the implementation of existing procedures to address allegations of sexual exploitation and abuse and other serious crimes against host State forces or non-State actors in the Central African Republic, it shall make any recommendations it deems appropriate.

Cooperation of the United Nations, including its separately administered funds and programmes and other subsidiary organs

5. For the purpose of the external review, the panel shall have unrestricted access to any United Nations records and information, written or otherwise, including any documents and other information collected or created by the Office of Internal Oversight Services (OIOS) in connection with the allegations and any of its related investigations, to the extent consistent with the mandate of OIOS.

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[a] These procedures are subject to ongoing review, including the Secretary-General's recent report entitled "Special measures for protection from sexual exploitation and abuse" dated 13 February 2015 (A/69/779), which sets out proposals that build on the findings and recommendations of a report issued by a panel of experts. These procedures include, but are not limited to: (a) the Staff Regulations and Rules and. administrative issuances, such as ST/SGB/2003/13 on special measures for protection from sexual exploitation and sexual abuse; (b) the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission; and (c) the model Memorandum of Understanding between the United Nations and Troop-Contributing Countries, as adopted by the General Assembly in its resolution 61/267 B, together with the Department of Peacekeeping Operations/Department of Field Support standard operating procedures on implementation of amendments on conduct and discipline in the model Memorandum of Understanding between the United Nations and Troop-Contributing Countries.

6. For the purpose of the external review, the panel shall have access to all United Nations staff members and other personnel, regardless of their seniority, whom the panel considers to have pertinent information. In accordance with United Nations Staff Regulations and Rules and administrative issuances, staff members shall cooperate with the panel and shall be accorded protection from retaliation resulting from such cooperation. The United Nations shall use its best efforts to facilitate the access of the panel to non-United Nations personnel.

Report of the panel

7. The panel shall use its best efforts to submit a report to the Secretary-General within 10 weeks after the commencement of its work. If the panel foresees a delay beyond 10 weeks, a notice of at least 3 weeks before the target date will be given to the Secretary-General setting forth the grounds for the extension.

8. The report shall include a chronology of the facts, an assessment of such facts and a description of existing procedures as well as an assessment of such procedures. The report shall also include recommendations as to action to be taken to address any violations of United Nations regulations, rules or administrative issuances as well as recommendations to improve the manner in which allegations of sexual exploitation and abuse and other serious crimes are addressed in the future.

9. The report and related documents shall be the property of the United Nations. The Secretary-General will make the report public, subject to due process and confidentiality considerations. In addition, the Secretary-General may use the report, parts thereof or any information collected by the panel in any manner the Secretary-General considers to be in the interests of the United Nations.

Conduct of the external review

10. The panel shall carry out its work impartially, objectively and without influence by any internal or external authority, regardless of its status.

11. The panel shall ensure that its external review is conducted with strict regard for confidentiality, fairness and due process for all concerned and, in respect of United Nations personnel, in accordance with applicable United Nations Staff Regulations and Rules and administrative issuances. All information collected during the course of the external review shall be handled with confidentiality by the panel. Exceptions to confidentiality are made for exigent circumstances including safety and security and the proper administration of justice and to preserve the Secretary-General's discretion as set forth in paragraph 9 above. Moreover, any individual named in the report of the panel shall, wherever practicable, have been interviewed by the panel and been provided with an opportunity to provide information. Any individual against whom an adverse observation has been made shall have an opportunity to submit written comments, wherever practicable, to the panel, which shall be annexed to the panel's report.

Annex III*

Comments Pursuant to Paragraph 11 of the Terms of Reference

As stated in the Methodology section (Part I, 2.1), the Terms of Reference of the Panel required it to provide those individuals in respect of whom the Panel has made adverse observations an opportunity to submit written comments. The Panel has included the comments of the individuals concerned in the attached appendix. The Panel further notes that in some cases it received more than one version of comments from the individuals concerned. In those instances, only the individual's last version is appended.

1. **Head of the Human Rights & Justice Section, MINUSCA**
2. **SRSG of MINUSCA**
3. **SRSG CAAC**
4. **Director of FOTCD**
5. **High Commissioner for Human Rights**
6. **Chef de Cabinet for the Secretary-General**
7. **Director of Ethics Office**
8. **USG for OIOS**
9. **USG for DPKO**
10. **Senior Officer EOSG**

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* Issued without formal editing.

1. Comments of Head of the Human Rights & Justice Section, MINUSCA

NATIONS UNIES
Mission multidimensionnelle intégrée des Nations Unies pour la Stabilisation en Centrafrique

MINUSCA

UNITED NATIONS
United Nations Integrated Mission for the Stabilization in Central African Republic

MY SECOND RESPONSES ON THE REPORT OF THE PANEL

Introductory Remarks.

1. I have read with great attention the second preliminary findings of the Panel. Below are my comments which are centered on the content. These comments are substantiated by evidences- E-Mail particularly that was previously sent to the Panel. To strengthen these comments, I wish to reiterate what I said to the Panel during the two hearings and in many exchanges through emails that my section and I take full responsibility to have documented allegations of human rights violations committed by International forces. Particularly, my section and I take full responsibility to have launched an investigation into sexual abuses committed by the French Sangaris and other contingents in Bangui.

2. I called also the attention of the Panel that the HRJS (Human Rights and Justice Section) under my leadership was the only international institution in CAR with UNICEF doing this investigation despite the presence of a Human Rights component within MISCA and other international NGOs as well as the International Commission of Inquiry. I therefore confirm that my section shouldered this responsibility according to its mandate. The ToR of the Head of the Human Rights provides that "Under the overall supervision of the Special Representative of the Secretary-General (SRSG) in the Central African Republic, and the substantive support and guidance of the Office of the High Commissioner for Human Rights (OHCHR), the incumbent will perform the following main functions as Head of the Human Rights component". Guidance related to the activities of the Head of Human Rights component in Peace Operations are clearly stated in the "Policy on Human Rights in Peace Operations and Political Missions" dated 1 September 2011.

The content of the preliminary findings

3. In drawing their preliminary findings concerning the HRJS, the Panel provides me with the part of the report which concerns my actions as the Head of the HRJS. As these findings are based on information constituting the body of the report, it is critical that I have access to the entire report, to better understand how the Panel reaches these findings, and to respond. I provided the Panel with more than 100 emails and, the three reports produced on the 30 June and 17 July 2015, with evidences as per the procedures that the principals of the organization were informed since the 30 June 2014 about our investigation and preliminary findings. My deep concern is that the Panel did not consider these evidences despite self-explanatory mails. Furthermore the Panel seems to downplay the 30 May ad hoc report which was shared with

OHCHR by inferring that "OHCHR drafted its own report"and at the same time admitting in contradiction that our report did not received any follow up. What was the content of this OHCHR report which was different from our ad hoc report? Surprisingly the Panel is supporting the parallel reporting which is a mistake in the Human rights context.

4. The Panel also failed to consider the SC 2149 which provided the Mission with the following mandate: *(i)To monitor, help investigate and report publicly and to the Security Council on violations of international humanitarian law and on abuses and violations of human rights committed throughout the CAR, in particular by different armed groups, including the former Seleka and the anti-Balaka, and to contribute to efforts to identify and prosecute perpetrators, and to prevent such violations and abuses, including through the deployment of human rights observers;* (ii)To monitor, help investigate and report specifically on violations and abuses committed against children as well as violations committed against women, including all forms of sexual violence in armed conflict, and to contribute to efforts to identify and prosecute perpetrators, and to prevent such violations and abuses; It should be noted that the protection of victims is not expressively stated on this resolution, however human rights performs its mandated tasks on the principle of "do not harm".

5. The wording of this excerpt exemplifies the Panel's inclination for incriminating findings. Para 3:"his actions were not only misguided but showed a completed disregard for his obligations…" Para 6 "the strategy of not shining light on the Allegations is revealed..." Para 7. There is an inference that HRJS prevented the HoM to disclose these Allegations. Not only is it false but this *a posteriori* attempt to rewrite the history of this investigation (This will be demonstrated later). Para 9…although the Panel recognized that my supervisor did not took actions, the Panel continue with its incrimination. "Para 10 and others paragraph accused me of obscuring allegations that the HRJS investigated". What was the purpose of devoting so much time in investigating and then obscuring or diluting the facts? This Panel excerpts is full of contradictions.

6. The Panel focused on the protection of civilians which is forged in Resolution 2149 of April 2015. It should be noted that this investigation started in May 2015 at a times where BINUCA a political mission was morphing into a PKO. At that times there no resources and means to implement of protection of civilians mandate which implies many considerations and which cannot be carry by a small section such as HRJS at that times. This explains why emphasis was put on the protection of children with UNICEF on the lead as stated in its mandate and core commitments.

Rebuttal of the Panel second preliminary findings

7. I reject these second preliminary findings. I will substantiate my objection on the two aspects which seem to guide the second preliminary finding of the Panel.

8. Under BINUCA's mandate, my small team (3 international staff, 5 UNV) and I were documenting and reporting violations and abuses of all sorts occurring in CAR. It is in this context, that we were documenting violations committed by International forces, particularly MISCA contingents under the African Union and starting with Sangaris in December 2013. We

came across many incidences of these violations. From time to time, we were sharing this information with the MISCA Force Commander and the commanders of these troops since we had only a political mandate. In April 2014, in light of the continuous human rights violations in the country, the Security Council provided the Mission with a full-fledged human rights mandate (See SC 2149 above). During this period, allegations were fully documented and reported to the chain of command within the mission and in OHCHR Geneva, whose ultimate responsibility it was to take the necessary actions concerning serious cases reported.

9. In early May 2014, local NGO and my staff informed me about allegations of sexual abuses from Sangaris. I swiftly tasked two human rights officers from France, and from DRC with the investigation as acknowledged by the Panel. I warned them about the sensitivity of this investigation and the deflagration that this investigation will create. I also decided to involve UNICEF which has a global mandate on children. Once UNICEF was involved, this became a **JOINT INVESTIGATION** characterized by regular contacts with UNICEF Representative, after the UNCT or the SMT as well as with UNICEF protection. As rightfully explained by the Panel, we jointly agreed that the French Command could not be informed until the investigation team had completed the hearings of the children and, until we had completed our respective redacted final report. Informing the French Command prior to the completion of the investigation was a necessity, for security/do not harms reasons. The Panel is acknowledging this cooperation.

10. For this investigation, I had to take into consideration as rightly pointed by the Panel (a) the credibility of our investigation with the objective to produce a meticulous report based on a very methodical investigation. (b) The confidentiality of the investigation as the confidentiality of information is the first step for the protection of victims and the bedrock of human rights monitoring. (c) The question of the legal basis of the investigation. Why I decided to launch an investigation against Non-UN command foreign forces noting that there were some acrimonious discussions about re-hatting and/vetting of some troops? Why, in this context, UN should investigate abuses committed by international forces which are not under UN mandate? Such an investigation is conducted in peace mission by Special investigation Unit, did we have the resources to complete this investigation? Did we have the mandate as a political office to investigate abuses committed against children? It is with these questions in mind that I decided in good conscience that a human rights investigation was warranted. I was not afraid of the consequences of this investigation. During Bozize and Ex-Seleka period, the section carried out very sensitive investigations. This one was one amongst other appalling violations we investigated.

11. The Panel adverse findings against the Head of the HRJS centered around two critical issues. 1. The protection of civilians. 2. Report to OHCHR and the issue of disclosure.

I. The protection of civilians

12. MINUSCA was provided the mandate to protect civilians by SC Resolution 2149 in April 2014. The terms of the mandate are clear: "to provide specific protection, for women and children affected by armed conflict, including through the deployment of Child Protection Advisors and Women Protection advisors". This mandate was to be implemented by the entire

Mission including the future peacekeepers. In terms of sequence, HRJS started investigating in May 2014. It is important to note that the period running from April to 15 September 2014 was termed as the Transition period with the objective of establishing peacekeeping related structures as well as policies documents governing all aspects of the new mandate, including child protection policy. In the absence of a dedicated Child Protection Unit, including Child Protection Advisors as in many peace operations, HRJS shouldered this responsibility. This is why it was decided to bring on board UNICEF. The Panel is surely aware that UNICEF has the global mandate on Child protection in Emergencies. This mandate is part of UNICEF's core commitment for children in Humanitarian Action. **This includes monitoring and reporting on grave violations of children rights but more importantly psychosocial support and care as well as well-being development.**

13. Therefore "relying on UNICEF for protection" was not only the best decision in terms on mandated activities but also was in line with the "**Delivering as One UN approach**" which allows for synergy, coherence in the delivery of UN mandated accomplishments. In this vein, the Panel should consider that with the inclusion of UNICEF in the conduct of this investigation, it becomes a **JOINT INVESTIGATION.** This means that there was a clear sharing of tasks. HRJS to monitor and report in order to bring the perpetrators to justice and prevent the occurrences of such violations and UNICEF to protect, support the victim and provide them with psychosocial care and ensure their well-being.

14. The Panel should also acknowledge the protection of the victims was severely compromised when the French investigators arrived in Bangui with all the details concerning the victims, based on an unredacted report provided to the French Embassy in Geneva by OHCHR. As a result, I received appeals from UNICEF to provide the Interview Notes. In view of this situation potentially dangerous for the children, I was told that UNICEF decided to activate the protection protocols which was already evoked in the HRO email. Regarding the collection of evidences and identification of the perpetrators, our report and that of UNICEF are the only UN documents which contains indications and details susceptible to lead to the arrest and prosecution of the alleged perpetrators

15. Subsequently, blaming the Head of HRJS on this ground does not stand as the protection of victims (children) as stated above is the mandate of UNICEF. Secondly, as I told the Panel in many instances, from the completion of the report to the arrival of the French investigators, the protection of victims was not an issue during investigation as the HRO and UNICEF staff were applying correlated security measures and protocols. Our HRO clearly stated that UNICEF was planning to put the children in "security" before our issuance of the reports. This issue came out early August when the French investigators arrived in Bangui and started investigating. As the supervisor in a subordinate position within the mission, the Section under my supervision assume the responsibility to have launched the investigation on these abuses. The Section under my supervision unfailingly followed-up on this investigation until the finalization of the report. I have consistently informed all concerned, and particularly the principals. At our level, we performed our role as mandated. I called the attention of the Panel on SC resolution 2127 (5

December 2019) and 2149 which requested OHCHR to deploy more Human rights officers in the country.

16. Based on the following, it was the responsibility of the Human Rights Office in Geneva which was aware of the magnitude of the crisis the small office in Bangui was facing and to have taken the requisite decision to deployment more staff to the field when the crisis had deteriorated and the SC had hinted on changing the mandate of BINUCA and upgrading it to a full peacekeeping mission with boots on ground. This was adequate early warning that the deployment of peacekeeping troops in addition to Sangaris would dilute the command and control situation in the mission. The discussions at the SC were sufficient to alert Management at the OHCHR that the advent of peacekeepers to the CAR required adequate monitoring in the light of past experiences from other missions. Yet adequate human and financial resources were not prepositioned for this purpose. I believe the Leadership in Geneva should be held accountable for trying to scapegoat the small team in Bangui for their failure. It should be noted that when The Geneva Office was notified about my imminent departure from the HRJS outfit but they failed to deploy my replacement, thereby leaving a gap in the management of the Office.

2. Report to OHCHR and the issue of disclosure.

17. The Panel is stating that the Head of the HRJS did not inform the OHCHR when the SRSG failed to take actions on the Allegations. Moreover, the Panel is inferring that HRJS warned the SRSG about the disclosure of these Allegations. This finding is really untrue for the three reasons below: 1- OHCHR was informed at the very beginning of this investigation through the weekly meeting via telephone conference of the CAR Task Force chaired in OHCHR Geneva by the Team Leader with the presence of the different OHCHR components, including, the Head of HRJS. This fact is important and should not be neglected. In this respect, the Panel should hold accountable a Head of HRJS for the communication gap within the OHCHR.

18. Secondly, as acknowledge by the Panel, OHCHR was informed when they received the 30 May ad hoc report which already contained two testimonies of these Allegations. In effect, based on an urgent request from OHCHR Geneva from the 28-30 May, on Wednesday 28 and Friday 30, my section through the OIC provided to OHCHR the report with two testimonies of the Sangaris abuses for onward transmission to DPKO New York. On the 30 May, my colleague in NY send us an email on the DPKO conclusion regarding our report. It should be noted that OHCHR had strong concerns about the re-hatting given the human rights records of these troops. A hard copy of this preliminary report as stated by our colleague in NY was handed over to DPKO principals during the Director-Level ITF meeting the afternoon of the 30 May. In the report regarding this meeting OHCHR New York conclude as follows "at this stage, it is unclear whether DPKO will consider the Human rights analysis". The Panel should not hide that the fact that the preliminary findings of the 30 of May ad hoc report which clearly mentioned abuses committed by French Sangaris, based on interviews of two children on May 20 was shared with OHCHR in Geneva and New York, with DPKO in New York at a Director level, and the SRSG Gaye in Bangui. Affirming the contrary as written in this excerpts is simply not accurate.

19. Moreover, inferring also that the OHCHR was not informed is far below the truth. The dual reporting warrants that OHCHR and the HoM are informed at the same time. More importantly, the Head of Human Rights component does not have a direct access to the High Commissioner as seem to argue the Panel, but report to OHCHR through the Africa Branch located within FOTCD. In this respect, the Africa Branch through the Desk Officer was copied to all the section in and out correspondences. Subsequently on the 17 July, the report was finalized and sent concomitantly to OHCHR and to MINUSCA principals not only to start the clearance process but also to initiate a conversation between the two entities on the next steps. The Team Leader, Africa Branch transmitted the report to the Head of Africa Branch and to METS and RoLDS. On the 21 July, the Head of Africa Branch informed OHCHR principals that the Human Rights and Justice Section in Bangui had finalized and send to Geneva for comments a report of human rights violations committed by international forces in CAR. This is a principal fact that the Panel wants to obscure. The email related to this transmission to the principals in FOTCD will have to be made public for transparency purpose. First comments were provided to us on the 21 July from Rule of Law Division. Second comments were provided on the 25 July 2015. I shared these comments with the SHR with the instructions to finalize the report by including the comments if necessary- she returned the report to me on the 28 July 2014. On this note, the Panel should be made aware that some of our principals in New York acknowledged the following as reported by Inner-city Press "***According to Malcorra the UN investigation lasted three months which allowed them to substantiate the allegations. When that finding was final it went to the two lines of command: The Head of mission in CAR and the OHCHR***". How can a Panel affirm that OHCHR was not informed whereas our principals in New York affirmed rightfully the opposite?

20. Thirdly regarding the information of the SRSG and the inference that HRJS warned him about the disclosure of the Allegations. This inference is equally untrue. At our end, HRJS OIC in Bangui send the report to the SRSG calling his attention on this preliminary findings. The mail referred to is self-explanatory. The immediate action after the completion of the investigation was to report to the SRSG and the Senior Management of the mission as well as OHCHR (through the Task Force) about the ongoing investigation and the finalization of a report on human rights violations by international Forces in CAR. My updates to the SMM stopped when I was officially discharged from the function of Chief Human Rights, although I was requested to continue with the daily management of the office until such time that OHCHR find another Senior Human Rights Officer to replace me. I continued by default to perform my duties with passion, integrity and responsibilities.

21. Human rights issues are of a crosscutting nature. The mandate for children's rights resides in UNICEF and therefore, I did everything possible, as reported, to work in collaboration with the UNICEF country office in Bangui. The HOM was aware of and advised our collaboration on our common approach to report on the ongoing allegations. So the responsibility for reporting was beyond a single UN entity. Rather than scapegoat the Head of the HRJS in Bangui for failure to act, I strongly ascribe this to a system failure, given that nobody from the HOM to NY and Geneva wanted to take the full responsibility for necessary action for fear that the allegations involved a powerful P5 member of the SC.

22. Two other issues necessitate further explanations: (a) The issue of not single out the allegations against the Sangaris militaries and The completion of the 17 July 2014 report which included allegations of serious misconduct by other military forces".

23. Regarding the first issue, our mandated task was to compile violations committed in CAR. Since we have many allegations of sexual abuses and other violations committed by the international troops, it was decided to write a combine report. The decision of the SMM is very clear: "to finalize a report of human rights violations committed by international force". Sangaris was part of the international forces as it is stated in the SC resolution and from a Human rights point of view there was no differentiation between Sangaris and MISCA regarding abuses. They were sharing the same premises, were working together in some operations, mutualizing their forces as recommended by Security Council Resolution 2127 of the 5 December 2013. Given the osmotic relationships between MISCA contingents and Sangaris as requested by SCR 2127 in CAR, it was morally, professionally impossible to single out Sangaris as impartiality, neutrality are our core values as we are strongly recommended to avoid preferential statement against a particular group. Moreover, the Panel finding is not in line with UN ethical Standards which stated *that "United Nations personnel, in the performance of their official duties, shall always act with impartiality, objectivity and professionalism. They shall ensure that expression of personal views and convictions does not compromise or appear to compromise the performance of their official duties or the interests of the United Nations. They shall not act in a way that unjustifiably could lead to actual or perceived preferential treatment for or against particular individuals, groups or interests"*

24. Regarding the second issue, as stated above, my team had investigated allegations of misconduct by other military forces as well as by Sangaris, all being part of the International non-UN forces and, these are included in the report. Secondly, the Panel has deliberately ignored that my term as the Head of HRJS ended formally on the 30 June when I signed a new offer, and on 9 August when I took my family leave. The continuation of these serious misconducts relied on my successor, along with the creation of the peacekeeping mission including a conduct and discipline department which has this mandate in its portfolio. I departed from the mission for my annual leave leaving the Section in the good hands of an OIC, a SHR copied to all exchanges of mail, indicating the responsibility in participating to meetings and in charge of reporting. During my annual leave, I also received email from OHCHR informing about the appointment of the new Director of the HRD and thanking me from my contribution as Head of the Human Rights and Justice Component. The only action taken was that on the 3rd September when the SRSG inquired about how far the Mission had gone with the inquiry on sexual abuses and other violations. The CoS, although recognizing that I submitted all the document on time for the information of the HQ, admitted that she hasn't looked at the document. . I came back from leave on the 9 September and I left for my new office in Kaga Bandoro on the 12 September. I did not hear about this issue until The Guardian reported on that.

25. On this second issue, the Panel is charging me with failing to fulfill the responsibilities of a role I was no longer in. Starting 30 June, I was no more in charge of Human Rights within the Mission. The question the Panel should be asking is why the Code Cable not sent to New York? Why were no actions taken on the 17 July Report, and finally did the Mission formally transmitted this report to the CDT since these troops were part of the new MINUSCA? Secondly as the Panel knows UN Ethical standards clearly states that that *"United Nations personnel shall maintain their independence and shall not seek or receive instructions from any Government or from any other person or entity external to the United Nations and shall refrain from any action which might reflect negatively on their position as United Nations personnel responsible only to the United Nations".*

26. To conclude, my explanations below have rendered the second findings and the conclusions of the Panel irrelevant to the case being perused against me. From May to August 2014, I have taken **15 major actions** regarding this investigation. Below are the summary of these actions. (1) The section under my supervision assigned two HROs to investigate and report. (2) Close staff meeting to devise an investigation strategy. This resulted in the inclusion of UNICEF in the conduct of the investigation). (May 2014). (3). Inclusion of two cases of abuses in a draft report to OHCHR for transmission to NY (30 May 2014). Information of the SRSG by OIC on this first two cases (30 June -1 July 2014) (4.) Regular follow-up by the Head of HRJS through regular meetings with the HRO (June 2014). (5.) Interaction with UNICEF rep after SMT and UNCT and UNICEF protection officer, in my office on the unfolding of the investigation. (6). Consistently shared reports with the SMM as well as with OHCHR (through the Task Force) about the ongoing investigation and documentation of case of Human Rights violations regarding international Forces in CAR. Report to the senior management when sufficient and credible information was collected. (4 June 2014) (7)- Drafting of the report as per the procedures. Zero draft written by HRO Second draft by SHRO reviewed by our Justice Officer. (26 June to 15 July 2014). (8.) Review of the report by Head HRJS (15-17 July) (9.) Transmission of the report concomitantly to OHCHR and to MINUSCA principals (17 July 2014) (10). Information of FOTCD by Africa Branch on the report drafted by the section 21 July). (11). Comments from OHCHR Geneva and inclusion of these comments in a revised version of the report (21-29 August 2014). (12) Meeting with the French investigators (4 August 2014). (13) Meeting with UNICEF (5 August); (14). Exchange of mails between Anders, the SRSG and OHCHR (15). Drafting of a note, a code cable to NY, shared with OHCHR and transmission to the SRSG Africa Branch request for a conversation between SRSG and HC the issue (5-6 August).

27. Furthermore, my actions should be judged in relation to the human rights mandate as per SC Resolution 2149. The Human rights mandate during the investigation period was as stated in paragraph 4 centered around monitoring, reporting, prevention and fight against impunity.

1- Did the section monitor the human rights situation in CAR? Yes. This is why the section was able to investigate as serious human rights violations as possible with limited resources. Several SG reports evidenced this monitoring activities.

2- Did the section specifically investigate these allegations: Yes through the HROs, proper investigation was conducted with UNICEF from May to June 2014

3- Did the section consistently report allegations: Yes from May to July 2014, reports were drafted and shared with the principals (30 June, 17 July) during meetings of the OHCHR CAR task force, with the SRSG during SMM (4 July).

4- Did the section contribute to identify and prosecute perpetrators, and to prevent such violations and abuses? This was the objective of the 17 July report sent to the SRSG and to Geneva. At this particular case, a dialogue should have started between SRSG, OHCHR on how this report should be made known to the countries in order to start the prosecution process. The ability to make that dialogue happen was beyond my role.

28. The Panel should acknowledge that from May to August, I conducted 15 major actions and my section executed many other tasking regarding this investigation. In comparison, from the time I left my post on the 9th of August until the revelations by the Guardian (almost one year) NO substantive and pertinent follow up action was conducted by the Mission and OHCHR.

29. Based on the following, a negative inference on the abuse of authority should not be made if the Panel considers what the Section did in relation to its mandated activities as per resolution 2149 and how this investigation was conducted. In the UN Ethical Standards *"Abuse of authority is the improper use of a position of influence, power or authority against another person."* From May to August 2014, my staffs conducted the investigation without interference from me. I did not use any power or authority against any of my staffs. I have never met with the victims to influence them and I have never tried to change the course of the investigations. Who are therefore these Third Parties who were subject to abuse of authority?

30. The positive role of the Section should be acknowledged as; it requires courage, engagement, dedication to conduct such an investigation in a conflictual situation such as in CAR. Writing a report in two weeks after completing the investigation is another challenge given our limited resources. The section fought to have violations committed by international forces on the table of our principals in Geneva and NY. There is no doubt that having documented these abuses has made the difference as acknowledged by HC Zeid on the 30 May 2015. It is the 17 July report which a year later has been shared by the current HC with the countries involved. It is this report which has allowed OHCHR to start a dialogue with the TCC on how to hold accountable the perpetrators of these abuses.

Final observations

(i) **The Panel strategy as evidenced in this excerpts seems to inflate my role in order to best protect the principals in New York and Geneva as well as in Bangui who failed to respond. There is a body of evidences which shows that the entire chain of command within the Mission (HoM, CoS, Special Advisor), in OHCHR (Africa Branch, FoTCD, New York Office), in DPKO (CAR ITF, Director Africa II) was informed about these abuses through three reports Therefore I would not accept any incriminating finding from the panel which tends to scapegoat.**

the Head of Section as well as the human rights cell which has performed its mandated activities and which has even broaden the scope of its investigation to include non-UN forces in difficult circumstances. It is therefore the principals who failed to bring these matters to the respective countries who should be disciplined. This happened finally in May 2[illegible]5 when the new HC shared the report en l'état with the TCC.

(ii) **There is no doubt that it is under my supervision that this investigation was conducted and concluded in a collective spirit as a team effort. This collective and Team effort through reporting and interaction with UNICEF led to find prima facie evidences of sexual abuses by the French soldiers and other violations committed by UN troops, and MISCA troops. On the basis of evidence collected in the field, our report clearly stated who the perpetrators were.**

(iii) **The 30 June ad hoc report sent to OHCHR for onwards transmission to DPKO exposed two cases of abuses by the French soldiers and other allegations by other contingents. There is no doubt that the principals in OHCHR Geneva and DPKO up to the Directors Level were informed about this report, as proven by an exchange of mails between the OHCHR and the Mission. Try to minimize this fact will not stand. Moreover, OHCHR was informed during all the articulations of this investigation. There was a weekly meeting of the task force based on the exchange of information on the human rights situation in the country. The Panel cannot blame the Head of the HRJS for in OHCHR communication gap.**

(iv) **Until the end of our investigation, UNICEF protected the children. This is why we were able to collect these testimonies. The victims and the witnesses were endangered not because of our actions and reporting but when the French investigators came with an unredacted report including the name of the victims which were not shielded. During investigation until the finalization of the report, the victims and witnesses were testifying in confidence to the Human Rights Officer and to the UNICEF staff. Moreover, the testimonies of the victims were meant to stay confidential until a criminal investigation is launched. Therefore, the issue of victims and witness protection was key in investigating steps by steps, in meeting with the children in protected location taking into consideration security measures and protocols. It was the ultimate responsibility of the Section and UNICEF based on "do not harm policy" to keep this investigation and testimonies confidential. .**

(v) **The strategy of minimizing the actions taken by the HRJS and his team, thus protecting the principals instead of rewarding the team under my supervision which meticulously investigated these allegations is obvious, as the Panel did not acknowledge the fact that for 9 months after the completion of my section's**

report no credible action was taken. Attempts to individualize my responsibility in a context of a team efforts does not bode well with the principle of fairness and equal justice and therefore is indicative of bias and injustice. There is a body of evidences beyond doubt which shows that we did the job and I informed the principals. The Panel should not forget that the head of the HRJS is only the advisor to the SRSG.

(vi) The charge of abuse of authority does not stand and is not bringing justice and fairness to the incredible work we did in relation with this investigation. The section did not downplay these abuses. We produced in three months three reports, we informed on several occasions the principals. Proof is that these reports are the ONLY UN documents which have ultimately served HC Zeid to engage with the respective countries concerned and OIOS to start investigation on the misconduct of MISCA troops now under the flag of the UN and required the French authorities to launch an investigation. What if there were no reports?

(vii) More than 100 mails were provided to the Panel and this documentation will have at some point to be made public. Moreover, the Panel refused to acknowledge that during a good part of the period in question, I was Head of section by default confined to the daily management of the Office. On the 30 June, I have already accepted a new position and a Code Cable was sent to OHCHR in that regard to find my replacement. After my departure, it was the duty of my successor or OIC to conduct this investigation to its final stage. I am not therefore responsible for the nine (9) months inaction by the Organization. Despite this fact, I shouldered this investigation. On the technical and tactical levels, the Human rights section has properly investigated these abuses. It is at a strategic level which include the SRSG, DPKO principals, and OHCHR principals at HQ where there was no proper follow-up. Trying to water down this fact will not stand.

31. Under the prevailing circumstances as I have fully explained, I fully complied with the "paramount consideration in the employment of staff and conditions of service. I have provided a catalogue of events as they occurred to the best of my ability, competence and integrity" in the light of the small Team on ground. Furthermore, the concept of "abuse of authority" applies more to the use of one's position of influence, power, or authority against another staff. I do not believe that my reporting obligations rise to the level of abuse of authority since there is no evidence that I obstructed/prevented the reporting by my subordinates during the crisis. We all worked proactively as team and carried out all preliminary investigations proactively as a team. On the basis of the above, I stand by my previous response and observations and hereby request the Panel to reconsider its approach as well as its conclusions and to redirect these to the appropriate higher levels of management, beginning from the HOM, relevant parties in NY and Geneva, whom they seek to protect.

32. While expecting that the communication surrounding this investigation will be made public for transparency purpose as well as my comments "en l'état", I reserve the right to avail myself to the UN system of administration of justice.

2. Comments of the SRSG of MINUSCA

Comments from the Special Representative of the Secretary-General

Dear Chair

Thank you for providing me with the opportunity to comment on the pertinent elements of the draft report with respect to my actions as SRSG. As indicated in my earlier communication to the panel on 27 October 2015, my resignation as SRSG on 12 August 2015 was the ultimate expression of full accountability for all my decisions as SRSG, including any shortcomings in my handling of the allegations of sexual exploitation and abuse committed by international forces active in the CAR.

I agree with your analysis that the criminal allegations of sexual abuse and exploitation against Sangaris were offensive and affected the most vulnerable: hungry, displaced children. Indeed, when I learned of them I was shocked and heartbroken. However, I cannot agree with your analysis that my alleged inaction in responding to the allegations against Sangaris constitutes an abuse of authority.

More specifically, I believe my actions do not meet the threshold of the definition because the responsibility to act and respond was shared between MINUSCA (and myself as SRSG) and OHCHR as per the Policy on Human Rights in United Nations Peace Operations and Political Missions (1 September 2011, paragraph 41, page 10). Moreover, existing policy guidance specifically indicates that OHCHR has the lead in investigating cases of alleged sexual exploitation and abuse committed by troops not under UN chain of command.

As both a human rights investigation and a French government investigation were on-going, I firmly believed that justice would be served. Likewise, UNICEF ensured the victims received psychological and medical services and increased their protection activities in the IDP camp. I also believed that the information gained in the investigations and the enhanced protection activities put in place after these allegations came to light provided a deterrent to further abuses.

Respectfully

Former Special Representative of the Secretary-General

3. Comments of the SRSG CAAC

Response of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG CAAC) to the excerpt of the Independent Review Panel

3 December 2015

It is important for the understanding of the events to clarify the context of information received by the SRSG CAAC as well as her response.

In July 2014, the SRSG CAAC was only provided with very limited information related to the Allegations in the context of a regularly-scheduled dinner with the UNICEF DED. During that dinner, the UNICEF DED informed the SRSG CAAC of a phone call she had received from the UNICEF Regional Director based in Dakar regarding allegations of sexual abuse and exploitation involving children by elements of Sangaris. The information was incomplete, including neither the number of victims nor their ages, and the SRSG CAAC was promised a written follow up once the UNICEF DED had received further information from the field. The SRSG CAAC never received this document.

At no point in the period between July 2014 and April 2015 were the Allegations included in the Monitoring and Reporting Mechanism (MRM) quarterly or annual reports from the Country Task Force on Monitoring and Reporting, which is co-chaired in CAR by MINUSCA and UNICEF Country Representative. The MRM, as a formal reporting mechanism on grave violations against children by parties to conflict, is the channel through which the SRSG CAAC should have received full details of United Nations verified information, including the nature of the violations and the age of victims.

Regarding the Secretary-General's annual report on children and armed conflict, the SRSG CAAC notified the Deputy Secretary-General and the Chef de Cabinet that she had no verified information to include the Allegation in the report on 8 May 2015, not in June 2015 as the text indicates. It took several attempts by the SRSG CAAC to receive basic verified information on the Allegations, and she received only a strictly confidential hard copy of the redacted interviews on 15 May 2015. It is noteworthy that no formal reports on the Allegations have been shared with the SRSG CAAC to date.

As you note in the text, the SRSG CAAC notified the French authorities of the Allegations, who in turn informed her that investigations had been opened. If the SRSG CAAC had received verified information on the violations through the appropriate formal channels, or was alerted by any entities that the violations were ongoing at any point in the intervening period, she would have followed up with the Country Task Force and with the French authorities to discuss further follow up options. However, the system of monitoring and reporting relies on the Country Task Forces to gather, verify and relay information.

4. Comments by Director of FOTCD

Comments by the Director of Field Operations and Technical Support Division of the Office of the High Commissioner for Human Rights

I wish to provide two comments to the text.

First, with regard to my alleged lack of communication with the head of HRJS (Part IV, Section I.1, p. 61) I would like to highlight the words "in writing", used by the Panel at the end of the paragraph. I indeed verbally informed the head of HRJS of the fact that I had shared the written notes.

The second comment relates to the conclusion of the Panel that the reassurances of the French diplomatic mission "should have been confirmed in more formal terms" (Part IV, Section I.1, p. 61). I agree that indeed there should be an established policy for such formal assurances to be provided by any Member State when information of a sensitive nature is shared. Nevertheless, such policies did not exist within OHCHR at the time (nor am I aware that they have been established in the meantime) and the negotiation of such a formal act would have taken time that at that stage might have resulted in more harm perpetrated on the victims or on other children.

5. Comments of the High Commissioner for Human Rights

Comments from the High Commissioner for Human Rights

Please find below my comments concerning draft texts drawn from the Panel's report and transmitted to me.

Without knowing the overall contents, tone or conclusions of the rest of the report, my reactions are limited in scope to the paragraphs sent to me.

I request my comments be annexed in full to the report.

Up front I would like to insist my primary considerations throughout have been focused on the children's rights and protection, and on the accountability and integrity of my office.

The Panel has concluded I had a "predetermined" view of my director's motives, suggesting there was something vindictive about my approach to calling for the investigation.

The allegations regarding the sexual abuse by non-UN peacekeepers in the Central African Republic have been dreadful. Having served as the Advisor to the UN Secretary-General on Sexual Exploitation and Abuse in UN Peacekeeping, I am all too aware of their seriousness and have witnessed in person the interviewing of many alleged child victims of sexual abuse in the Democratic Republic of the Congo in 2004. Mindful of just how terrible sexual abuse is, how child victims ought to be protected, and the level of care required to do so, I understand clearly how any premature or inappropriate exposure of their identities can be damaging and even dangerous.

My shock, therefore, on learning on 6 March 2015 that one of my most senior directors had conveyed a confidential, un-redacted document, containing the names of alleged child victims to a diplomatic mission, was very real. Even though we met as often as three times a week throughout the period September 2014 to March 2015, he never once told me about the confidential document, or his actions in relation to it. I was very disturbed that for the second time in four months, the name of the same director was directly connected to the possible inappropriate sharing of confidential information with a member state – without the knowledge of the High Commissioner.

The first case had emerged after many documents were leaked from within the foreign ministry of a member state and placed online, citing detailed highly confidential, privileged, information allegedly provided over a two-and-a-half-year period by the concerned director to that State's ambassador. The unauthorized sharing of confidential UN information appeared to weigh against the human rights of tens of thousands of victims of one of the world's most protracted, unresolved, situations, and I had therefore felt compelled to request an independent investigation.

The sharing of the un-redacted CAR document to diplomats from a country whose troops were implicated in possible, very serious, crimes, was therefore the second such incident, and suggested the possibility of a pattern of unethical behaviour. I strongly felt I could not ignore this second episode, and requested another investigation be launched; this does not mean I had "predetermined" the outcome of either investigation. However, I felt that if the investigations did uncover seriously inappropriate contacts with member states, undermining the human rights interests of victims, then there should be accountability. The call for accountability is one my Office often makes, and I felt – and still feel – that it should not then be brushed under the carpet when there is a suggestion that the UN's own senior staff may be involved in unethical behaviour.

In the case of the second episode, I knew there would only be further risk to the safety of the children without necessary judicial safeguards in place. It should have also been known by the director, given his long experience in human rights, that, if the names were to be disclosed to any non-judicial authority, the alleged victims would have to give their prior "informed" consent – which, given they were children, was virtually impossible.

Therefore giving out the names of both the children and investigators in this particular case, violated the "do no harm principle" -- a principle which must guide all the work of the UN -- reflected in the Secretary-General's Bulletin ST/SGB/2007/6 and applicable to all confidential information handled by the UN system.

Moreover, it was appalling that someone apparently seeking to defend the director, just a few days after his suspension, leaked the document -- with the names of the children and the investigators once again un-redacted -- to the press and to others, thereby hugely amplifying the risk of them being exposed to the public, and further endangered, either by the perpetrators or by their own community.

I have also found it disturbing that some of those driving the publicity campaign surrounding this issue have at times attempted to question the integrity of the human rights officer who first learned about the alleged sexual abuse of the children, investigated it thoroughly, and wrote up the summary of those interviews which was subsequently given un-redacted, and without her knowledge, to the concerned diplomatic mission by her most senior director.

I would like to place on record that I believe her conduct throughout has been impeccable. She diligently followed up on grave allegations, discreetly interviewed the children, and took all the necessary measures to protect them, while recording the awful nature of the abuse. I regret that her name was publicly exposed, when the internal document she had prepared was inappropriately made public. If there is a real heroine in this whole sorry affair, it is her.

Had the director concerned shown the confidential document to the High Commissioner in July 2014, the proper procedure of redacting the names, before sharing the document with the relevant judicial authorities, would have been followed. And the children would not have been placed at further risk.

The director received the confidential document on or around 15 July 2014, and before the end of the month, gave it un-redacted to the diplomatic mission in question. It was not until a further week had passed, after national investigators had been sent to Bangui and had contacted the UN staff on the ground, revealing that the document with the children's and investigators' names had been given to them by the director, that he retroactively told the Deputy High Commissioner of his having informed the said mission about the document.

The director never sought the advice of, or instructions from, the then High Commissioner for Human Rights, upon his receipt of the confidential document and prior to conveying it to the diplomatic mission. This is hard to comprehend; given the previous High Commissioner was instrumental throughout her career in furthering accountability for rape and sexual violence.

Accordingly, there was never any internal resistance within OHCHR at levels above him, over how OHCHR headquarters should inform the relevant authorities before he himself had handed it over, because he had never tested the proposition. Had he informed the High Commissioner at the time, as he should have, she could have brought it directly to the attention of the judicial authorities at the very highest levels, without compromising the safety of the children and investigators concerned. This issue was, after all, no small matter.

Not only did the allegations relating to the sexual abuse by non-UN soldiers of children in the CAR subsequently garner world-wide press attention (framing it as a UN scandal) they also merited the establishment of this very panel by the UN Secretary-General. And yet the director concerned seemed not to believe it was an issue important enough for the High Commissioner at the time, despite the fact she was in Geneva throughout almost the entire three-week period prior to his mentioning some of his actions to the Deputy High Commissioner on 6 August 2014. Neither did he ever inform me of the terrible allegations, when I assumed the post of High Commissioner, nor sought my intervention in ensuring the State in question was following up effectively on them. The obvious question that follows is clear: if not this issue, what then would be important enough for referral to the High Commissioner?

I look forward to the publication of the Panel's report. Investigations into sexual abuse must be made more effective, and those responsible for these most

toxic of crimes must be punished. The child victims must always be at the forefront of our thinking.

6. Comments of the Chef de Cabinet of the Secretary-General

Response to the request for written comments to draft findings of the Secretary-General's Central African Independent Panel into the United Nations response to allegations of sexual misconduct by non-UN command foreign military forces

I refer to the communication dated 5 November 2015 providing me with the opportunity to submit written comments on the preliminary draft of excerpts of the Panel's findings. Specifically, the draft findings indicate that my facilitating a meeting between the High Commissioner for Human Rights and senior United Nations' officials, in particular the Under-Secretary-General for Internal Oversight Services and the Director of the Ethics Office, was "*problematic….[and]…. with the benefit of hindsight…. may demonstrate ill-considered action*".

The facts surrounding the Panel's independent review, that of the alleged sexual abuse and exploitation of minors represent among the most grievous crimes that can be committed against already vulnerable and at-risk populations in conflict and post-conflict situations. This context was and remains central to any and all actions undertaken by me in my capacity as Chef de Cabinet.

With respect to the meeting referred to in your communication, at which I was not present, I was contacted by the High Commissioner for Human Rights in mid-March 2015; he informed me of a matter which was considered both serious and sensitive and on which he needed guidance on the Organization's applicable protocols, rules and regulations. As the High Commissioner was attending a retreat in Turin at which many senior officials were present, I felt it appropriate that he seek guidance from relevant offices with the necessary technical expertise and knowledge of the applicable institutional framework to provide advice on possible courses of action namely: the UN Ethics Office, the Office of Human Resources Management and the Office of Internal Oversight Services. In this regard, and as indicated in the email correspondence I submitted to the Panel, I wrote a message to the Assistant Secretary-General for Human Resources Management and the Director, Ethics Office stating that the High Commissioner would be reaching out to them and seeking that they avail themselves to support and advise him. Separately, I informed the Under-Secretary-General of the Office of Internal Oversight Services that she would be contacted by the High Commissioner on a delicate and urgent matter.

Part of my role as Chef de Cabinet is often facilitating conversations and appropriate, effective, information flow between the senior managers of the Organization to enable timely and appropriate responses. In this case, I was cognizant of the sensitivity of the matter, given that it related to a possible violation of UN protocols through the disclosure of information in a manner which may put victims at further risk of harm. There was therefore

a requirement that the High Commissioner be provided with the technical guidance necessary to ensure that this matter was comprehensively and correctly proceeded upon. However, in facilitating the High Commissioner being provided with said guidance, I remained cognizant of the roles and responsibilities of the officials concerned. As such, my actions were also predicated on the understanding that any interaction each official would have, or advice they may provide, would be done on the basis of their professional judgement and be within the context of their respective roles and office mandates, including any limitations deriving thereof.

In this regard, the Panel's draft findings highlight the tension that may exist between the role of certain senior officials in terms of advice to senior management and other aspects of their responsibilities. I therefore understand how these events may have been misconstrued. In the case of the Office of Internal Oversight Services, the Independent Audit Advisory Committee, in its latest report to the General Assembly, has also commented on what they referred to as an *"inherent tension"* and recommended the development of guidelines and protocols to be used when advising management or making statements about situations that may be subject to audit or investigation (A/70/284, paragraph 57). The Panel's draft findings further support the need for greater clarity in this area.

In conclusion, I would like to thank the Panel for its work and in the context of the draft findings provided to me, for highlighting an area which merits careful consideration and the institution of clearer protocols.

12 November 2015

7. Comments of the Director of Ethics Office

Statement of the former Director, UN Ethics Office in response to the CAR Panel's Draft Report of 5 November 2015

Submitted as of 12 November 2015

You have kindly provided the opportunity to submit comments to be annexed to the Report of the Central African Republic Independent Review Panel into United Nations Response to Allegations of Sexual Misconduct by Non-UN Command Foreign Military Forces.

I appreciate your conclusion that I engaged in no abuse of authority. Nonetheless, I think it essential for a full understanding of what transpired that I offer some important facts and clarifications.

I am the former Director, UN Ethics Office, having served between 19 July 2010 and 3 August 2015.

In 2006, the Secretary-General established the UN Ethics Office with independent status. Under its mandate, the Office neither represents Management nor does it serve as an advocate or representative for staff members. The primary objective of the UN Ethics Office is to support the Secretary-General in sustaining and maintaining an ethical organizational culture. The Director reports directly to the Secretary-General.

The UN Ethics Office provides its services to any UN staff member, regardless of rank. The mandate of the UN Ethics Office includes administration of the Secretary-General's Bulletin on Protection against Retaliation (ST/SGB/2005/21); the provision of confidential ethics advice; administration of the organization's financial disclosure programme; provision of annual ethics training and communication; and consultation on policies and practices.

No one element of the Ethics Office's mandate takes priority over any other. Neither are the differentiations between these five mandates completely distinct. The Office is frequently called upon to interpret and advise staff and management about the UN Regulations and Rules on staff conduct. This is true especially for the SGB on Protection against Retaliation.

Throughout this matter, the Ethics Office was called upon to act with regard to two of its roles: provide confidential ethics advice *and* administer the UN's Protection against Retaliation Policy (the "Policy"). The Office often advises staff and managers, alike, on how the Policy against Retaliation may apply and how retaliation can be prevented. As a practical and moral matter, it is incumbent upon the Ethics Office to seek to prevent workplace harm, such as retaliation, from occurring in the first place, rather than merely to work to cure the ill effects of retaliation that have already occurred.

Under the Policy, covered individuals may request protection against retaliation by filing a written complaint with the UN Ethics Office. Complainants typically present information seeking to show that they engaged in one of three types of protected activity: (1) filed a complaint of misconduct with one of the UN's official internal channels for reporting, (2) participated in an internal audit, or (3) were interviewed as part of an internal investigation. The complainant must show that he/she suffered some type of adverse workplace retaliatory action as a result of and subsequent to the protected activity.

However, the UN's policy also provides a limited avenue for individuals to report misconduct external to the official UN reporting channels. Under Section 4, protection against retaliation may be extended to an individual who reports misconduct to an entity outside of the established internal channels, provided that specific criteria are satisfied. This limited exception permits staff members to seek whistleblower status without first exhausting the internal reporting mechanisms provided by the Secretary-General, under authority of the General Assembly. Under specific conditions as outlined in the Policy, external reporting of observed misconduct (e.g., "external whistleblowing") can be deemed to be a protected activity for purposes of retaliation protection.

The Panel takes issue with my actions and participation in two specific meetings, one held on 20 March 2015 and one held on 8 April 2015. The Panel indicates that it would have preferred that I had recused myself from the latter meeting, and left the former meeting precipitously—once the agenda for that meeting was clarified by attendees. The Panel believes that my participation in both meetings created a potential conflict of interest but concludes "no conflict of interest actually materialised."

I respectfully submit that the Panel errs when it suggests that there existed even a potential conflict of interest. The critical question for the Ethics Office was whether one or more UN staff members had reported misconduct *externally* rather than to one of the UN's four official and internal reporting channels, and thereby placed themselves within this limited avenue of protection provided by Section 4 of the Policy. Under its mandate, the Office was called upon to advise both members of Management and certain UN staff members working for the Office of the High Commissioner for Human Rights about whether this Policy may apply, depending upon the facts that at the time of both meetings were most certainly unclear.

I wish the record to reflect the following:

On 19 March 2015, I received an email from the Chef de Cabinet asking that I provide ethics advice to the High Commissioner, Human Rights, concerning an urgent matter. I was not advised of the nature of the advice requested, nor was I advised of any individual or any issue that would be the focus of that requested ethics advice. As the Panel has concluded, I could not have anticipated or known of the topics of discussion in advance of the meeting itself. As the Chef de Cabinet speaks for the Secretary-General, it would have been highly inappropriate to refuse to participate in this urgent discussion.

On 20 March 2015, I met with the High Commissioner, the Deputy High Commissioner, the ASG, OHRM, and the USG, OIOS. After a lengthy and confusing presentation by the High Commissioner and his Deputy, it was obvious that Management needed to gather basic facts about various UN staff members' actions in connection with a human rights report of sexual exploitation and abuse arising either in Mali or C.A.R. Immediately after that meeting, I contacted my colleagues in the Ethics Office in New York to have the precise language of Section 4, SGB 2005/21 sent to me via email. This would assist me in providing ethics advice and in determining how the Policy might apply to those UN staff members who were allegedly involved. During the meeting of 20 March 2015, several individuals' names and/or titles were mentioned as having some role in this unfolding matter. The D-2 staff member whose decisions and actions have been central to this entire situation was not the sole focus of that meeting.

On 23 March 2015, I participated in a briefing with the Chef de Cabinet that advised her of the discussions held the previous Friday. Also present at that meeting were representatives of the Executive Office of the Secretary-General and the Office of Human Resources. The outcome of that meeting was for Management to gather written statements from the High Commissioner, the Deputy High Commissioner, and various staff members who had direct knowledge of the human rights report at issue, and how and when such report was communicated inside and outside of the UN. I agreed to contact one specific individual to ensure that he understood the UN's policy on protection against retaliation, the process for filing a complaint of retaliation with the UN Ethics Office, and the conditions under which section 4 (protecting external whistleblowers) might apply.

Before I was able to speak with this individual, he sent an email on 24 March 2015 requesting that I contact him. The Ethics Office provided confidential ethics advice to him under the Policy in response to his request. On 30 March 2015, this individual sent an email, attaching his written statement about dealing with reports of paedophilia in CAR, to the USG, OIOS and to the Ethics Office. This individual indicated that he was providing his statement at the request of the Deputy High Commissioner, OHCHR. Notwithstanding the advice provided to this individual about his rights under the Policy, he did not submit to the Ethics Office a written complaint requesting protection against retaliation at that time; nor to my knowledge has he ever done so with regard to this matter.

On 31 March 2015, I spoke with the High Commissioner about the written statements that had been requested. We discussed lingering confusion about whether the matter arose in Mali or CAR and how the Policy might apply to various UN staff members, including the D-2 staff member. I inquired whether the High Commissioner had considered alternatives other than an internal investigation referral to OIOS, as such a referral could be seen as having an adverse and retaliatory impact upon any individual's career. The High Commissioner discussed his continuing concerns about leaks of confidential information within OHCHR.

On 8 April 2015, I attended a meeting with the High Commissioner, the USG, OIOS, the ASG, OHRM, and a representative of the EOSG. Management discussed several possible courses of action, based on the information contained in the statements it had gathered from individuals with relevant information. The USG, OIOS, clarified the status of a prior internal investigation concerning one involved staff member. I was asked to explain how the Policy might apply, specifically the mechanisms for external reporting of misconduct (see Section 4, SGB/2005/21). I noted that there remained open questions about how the report concerning human rights violations occurring in CAR had been shared within the OHCHR chain of command, when those discussions or meetings had occurred, and when and with whom had this report been shared externally.

Under Section 4 of the UN's policy on Protection against Retaliation, exhaustion of the internal complaint mechanisms qualifies as one of the avenues permitting external reporting. If the statements gathered by Management had indicated that the D-2 staff member had reported his concerns about sexual exploitation and abuse, and shared the instant human rights report with his chain of command *before* sharing the report with anyone external to the Organization, then subsequent actions that harmed his wages, terms, or conditions of employment with OHCHR might constitute retaliation under the Policy. Thus, understanding the nature and chronology of this individual's actions and the parallel actions of his chain of command were and are important areas of inquiry under the Policy. Application of Section 4 of the UN's policy on protection against retaliation is fact specific. If this provision is applicable to any specific staff member's conduct, then this matter will constitute one of first impression for the UN.

Though the meeting held 8 April 2015 clarified some of the decisions that Management could take, no decisions were announced at meeting's end.

On 9 April 2015, I wrote to the High Commissioner, the Chef de Cabinet, and USG, OIOS, urging caution in connection with starting any internal investigation into this individual's conduct. I suggested that the High Commissioner gather additional facts before deciding to refer the matter to OIOS. I learned subsequently that Management's decision to refer the matter to OIOS for an internal misconduct investigation had been taken before this email was sent. As a result, my advice was not considered prior to Management's decision.

The primary concern of the Ethics Office was to determine whether the D-2 staff member could be considered a whistleblower in accordance with the Policy. If the requested written statements had indicated that this individual had satisfied either his internal reporting obligations or the conditions precedent for external reporting, then the Ethics Office would have been in position to advise Management and this individual accordingly. My advice to Management was to proceed with caution about referring the matter to OIOS for an internal investigation.

I must respectfully disagree with the Panel's conclusion that my conduct placed the Ethics Office in a potential conflict of interest. Under UN Regulations and Rules, a personal conflict of interest "occurs when, by act or omission, a staff member's personal interests interfere with the performance of his or her official duties and responsibilities or with the integrity, independence and impartiality required by the staff member's status as an international civil servant." At no time has there been any legitimate question about my personal interests interfering with the discharge of my official duties. Indeed, the Panel's conclusion in this regard seems based on its view that the mandate of the Office itself harbors an inherent conflict within its assigned roles and duties.

As the Panel must recognize, there is a substantial distinction between personal conflicts of interest and positional or role conflicts. Without a showing that I placed my personal or private interests above those of the Organization and in violation of my Oath of Office, there can be no conflict of interest. A role conflict, on the other hand, raises the question whether the mandates assigned to the UN Ethics Office can be discharged without contradiction. A role conflict is not a personal conflict of interest.

As is the case for all UN staff members, respect for the mandate provided to one's office and role is central to effective administration. In the current matter, the Ethics Office was asked by the Secretary-General to discharge its mandate under the terms of reference provided by ST/SGB2005/22. This includes provision of confidential ethics advice and administration of the Policy.

It is well established in the field of organizational ethics and compliance that the role of an independent ethics office attracts complex demands. One does one's best in navigating controversy and providing confidential ethics advice in difficult situations. Providing confidential ethics advice incorporates all UN staff regulations and rules concerning staff conduct—*including* its policy against retaliation. I respectfully submit that the Ethics Office properly discharged its mandate in this matter and that not even a potential conflict arose under the UN Regulations and Rules.

If the Panel believes that there is some form of inherent role conflict within the mandate of the Ethics Office, it is respectfully requested that the Panel communicate its concerns directly to the Secretary-General and to the General Assembly.

The fact that members of this Panel would, in hindsight, have made different decisions, shows the benefit of having the time, distance, information, and luxury of reflective analysis. Such was not the case in the instant situation and did not become such for several months after the significant meetings were held and Management made its decisions concerning this matter in its entirety. Different decisions, in retrospect, are merely that – they are different. Different does not equate with abuse of authority or personal conflict of interest.

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8. Comments of the USG for OIOS

Comments provided in response to Adverse Findings by the Central African Republic Independent Review Panel With regard to my role in that matter in my former capacity as Under-Secretary-General for Internal Oversight Services (OIOS)

I welcome the opportunity to respond to observations of the Panel with regard to my role in responding to allegations of sexual exploitation and abuse in Central African Republic, as investigated by the Office of the High Commissioner for Human Rights.

I will respond to each remark as provided to me in the communication dated 26 October 2015 from the Chair of the Panel.

Panel Remark 1:

"Your decision to participate in the 20 March 2015 and 8 April 2015 meetings have come under the scrutiny of the panel because, as head of OIOS, you knew or should have anticipated that the object of the meetings was to give the High Commissioner advice in relation to the conduct of the director of the Field Operations and Technical Cooperation Division."

Response: I received an email from the Chef de Cabinet of the Secretary-General dated March 19th indicating that the High Commissioner would contact me the following day, and that, "There [were] new developments regarding the staff that OIOS has investigated. Very delicate and urgent."

The mandate for OIOS established by the General Assembly in its resolution A/RES/48/418 B dated 12 August 1994, describes its purpose *"to assist the Secretary-General in fulfilling his internal oversight responsibilities in respect of the resources and staff of the Organization"*. Section 5 (d) of that resolution describes *"Support and advice to management" on the effective discharge of their responsibilities* as one of the modalities through which that assistance is intended to be achieved. The Secretary-General's Bulletin ST/SGB/273 dated 7 September 1994, *Establishment of the Office of Internal Oversight Services*, further reinforces that modality word-for-word in *Section V. Support and Advice to Management.* Finally, ST/SGB/2002/7 *Organization of the Office of Internal Oversight Services*, Section 3.2 specifically describes one of my responsibilities as, *"advises the Secretary-General and senior management of the Organization on oversight issues."*

Therefore, attending the meeting on March 20 as requested by the High Commissioner for Human Rights, and providing advice to him on the effective discharge of his responsibilities and on oversight issues, was not only appropriate as foreseen in my mandate but was required of me, whether or not I knew the specific subject matter; not to do so would have amounted to dereliction of my legislated responsibilities.

Likewise, my attendance at a meeting on 8 April with the Chef de Cabinet for the Secretary-General for the same purpose was required of me. Furthermore, ST/SGB/273, Section II.3 indicates, "*The Office* [OIOS] *may accept requests for its services from the Secretary-General, but the Office may not be prohibited from carrying out any action within the purview of its mandate.*" A request from the Chef de Cabinet on behalf of the Secretary-General amounts to such a request.

Panel Remark 2:

"As such, once you participated in the meetings this compromised your independence in relation to cases involving the director that would be submitted to your office by the High Commissioner."

Response: Participation in meetings to advise senior management does not compromise operational independence with respect to subsequent decisions on any subject matter discussed. Advice is based on information provided, as opposed to assurance work (including audits and investigations) that is always based on appropriate evidence.

In effect, my role in the meeting of March 20 was to advise the High Commissioner on whether the matter warranted involvement of OIOS, and on April 8 to advise the Chef de Cabinet likewise. *'The matter'* was alleged to have been the improper disclosure of a confidential human rights report that, due to its alleged failure to follow proper practices, including for redaction of names and for official transmission of documents, created serious risks for the persons identified in the report and for the organization.

Regardless of my attendance at the meetings, my decision to assign the case for investigation was made outside the meetings, independently and objectively, in consideration of two criteria:

i) whether the reported matter fell within the mandate and jurisdiction of OIOS; and,
ii) whether the alleged conduct, if substantiated, possibly amounted to serious misconduct and/or presented high risk to the organization.

In addition, I considered whether the information provided (i.e. the details of the allegation) was credible.

It was abundantly clear during the first meeting that while the two criteria appeared to be satisfied, the details as presented at the time were not yet clear and concise enough to be credible, as there remained confusion on the location of the events portrayed in the allegedly leaked report as well as on whether they involved UN-hatted troops.

In addition, the subject of the allegation was said to be self-proclaiming entitlement to "whistleblower" protection and threatening to go to the Press were his actions to be investigated. There was, however, an internal mechanism to claim such protection (through the Ethics Office) that he had not apparently availed.

Receiving an allegation of misconduct, whether in a meeting or by any other means, neither creates a conflict in deciding to investigate nor taints its conduct and outcome. Every allegation is essentially a request received from someone, and investigations themselves frequently clear subjects of the allegations.

Panel Remark 3:

"Your further decision to depart from the usual practices deprived the director of FOTCD of the protection of an independent and consistent approach for receiving, recording and screening of the High Commissioner's request for investigation and unduly exposed the director of FOTCD to an unwarranted placement on administrative suspension."

Response: The Under-Secretary-General (USG) is the head of OIOS and is the official responsible for all of the Office's activities. ST/SGB/273 and ST/SGB 2002/7 provide the USG of OIOS with the authority to initiate investigations, and nothing in OIOS internal procedures, including the Investigation Division's intake procedures, removes this authority.

It was not unusual that reports or allegations of misconduct came directly to me from other senior managers at or above my own level, nor does anything in my mandate prevent such direct reporting. The UN Secretariat is well known for respecting its bureaucratic hierarchical structures.

The Investigations Division is a well-known exception, with some of its managers and staff cultivating a rogue attitude of independence from OIOS senior management to whom it reports, and from its Under-Secretary-General, to whom, in accordance with ST/SGB/2002/7, Section 7.1, the Director of Investigations is directly accountable. Some staff members and management of the Investigations Division in New York were also suspected to have inappropriately disclosed confidential matters to further personal agendas.

It was likewise not unusual (nor prevented by my mandate) for me, as USG of OIOS, to direct matters for audit or investigation, including overturning referrals and making exceptions on jurisdiction for the purpose of assisting other organizations at their request.

What was unusual in this particular case was the Investigation Division Director's reaction to this particular decision—there was no legitimate reason for him to object to my decision, nor to do so quite publicly. All of the requirements for receiving and assessing the allegation were substantively satisfied by me independently before I made the decision to assign it for investigation.

Having designated or delegated to any division of OIOS responsibility to administer a process, such as intake of allegations of misconduct for the Director's decision, did not remove my authority or competence to make an informed decision myself. United Nations Dispute Tribunal Order no. 139 (GVA2015) confirmed that my decision was indeed lawful and properly made on that basis. Furthermore, thereafter, I did not directly conduct or supervise the investigation, nor did I interfere with it or impose my views on the investigators; indeed, given the eventual recusal of the Director of Investigations from the case, I assigned his duties with respect to this case to the Assistant-Secretary-General for OIOS, who was fully competent to carry them out. This assignment is also permitted by my mandate.

Furthermore, the intake procedures foresee reconsideration of decisions taken to investigate; yet no request for such reconsideration ever came forward from the investigators, further confirming that to investigate in the first place was the proper decision.

I also initially, as always, fully expected constructive input from the Director of Investigations throughout the process, which is why he was copied on all correspondence with the Deputy Director in Vienna, until he publicly announced his recusal from the case.

Both the Director of Investigations and the Deputy Director in Vienna knew and understood my reasons for restricting the handling of the case to the individuals in the Vienna office of the Deputy Director responsible for investigating: it was my complete loss of trust in key individuals in the New York office to maintain and respect the confidentiality of the highly sensitive information that would otherwise be placed on file in the division's case management system, rendering it accessible to virtually all investigators. The mishandling of this matter by the Director of Investigations himself only confirms the legitimacy of that reasoning.

On the matter of placement of the Director FOTDC on administrative leave, OIOS did not request that the Director FOTDC be placed on administrative leave. There is no call for automatic administrative leave for staff being investigated by OIOS, and OIOS was not responsible for or involved in that decision. My decision to initiate an investigation was therefore not the cause of the Director FOTDC being placed on administrative leave.

In fact, the Deputy Director (Vienna) supervising the investigation informed me that the High Commissioner was planning to seek approval of paid administrative leave for the director of FOTDC pending the outcome of the OIOS investigation, and that OIOS did not deem such action a requirement for investigation purposes. I immediately and personally communicated that information to the High Commissioner by teleconference, also with the Assistant-Secretary-General for OIOS in attendance. I subsequently confirmed to the Deputy Director (Vienna) by email the same date that I had done so, together with the reaction of the High Commissioner, being that while he understood that OIOS did not deem administrative leave necessary, he had his own reasons to seek such approval.

Panel Remark 4:

"Your willingness to comply with the High Commissioner's request led you to fail to consider as part of the intake process obviously relevant considerations such as the fact that the information had been communicated to a third party authorized to receive it, that the policies and practice were consistent with the transmission of the information by the director and that the information had been communicated to the director's first reporting officer some seven months earlier."

Response: As outlined above, I did not "comply with the High Commissioner's request"; I independently assessed the allegation and the statements provided and decided the matter needed to be investigated.

While I am familiar with what should and should not be disclosed in relation to completed investigations (OIOS does this routinely), I am also keenly aware that it is neither appropriate nor necessary to determine the outcome of an investigation before deciding to investigate.

It was reasonable to believe that the High Commissioner for Human Rights and his Deputy, who both provided information, knew how their reports were supposed to be handled, were acting in good faith, and were aware of the seriousness of the allegation being made. The investigation process itself is designed to collect all relevant information regarding policies and practices, and to determine whether actions taken are consistent with requirements or constitute misconduct.

Furthermore, while the Director of FOTDC had indeed provided the information to his first reporting officer seven months earlier, the statements provided (including by him) indicated he had only apparently done so approximately one week after providing the information to an external party (the French Mission to the UN), and only after that allegedly unlawful disclosure came to his first reporting officer's attention.

In addition, there is no statute of limitations on misconduct in the UN; many allegations that result in investigations by OIOS only come to light months and sometimes even years after the reported misconduct occurs.

Given the seriousness of the alleged misconduct in this case and the strength of the statements provided, an investigation was, in my professional judgment, the most reliable mechanism to determine the actual facts of the case in order to ascertain whether misconduct had occurred.

Panel Remark 5:

"Abuse of authority, in the context of the UN involves an improper decision or action having a negative impact on a third party. Your participation in meetings bearing on the conduct of the director prevented you to meet the standard of independence required for taking charge of the decision as to whether the complaint of the High Commissioner should be assigned for investigation."

Response: I strongly disagree that my decision to investigate was improper. It was the right decision, considering credible allegations of serious misconduct made in good faith.

I also disagree that my decision to investigate had any negative impact on a third party, in this case the Director of FOTDC. A decision to investigate is not an outcome, but rather is intended to support accountability for actions; accountability is not negative but indeed is the cornerstone of integrity for all international public servants.

"Independence" in the context of internal oversight does not require that decisions be made in isolation, but rather that they be made with an objective mindset in consideration of relevant information and context, unaffected by inappropriate influence from management or, in this case, intimidation by the alleged subject. It was, and still is, a proper decision.

The negative impact occurred when the Director of Investigations publicly challenged my lawful authority as the decision-maker; the Director of FOTDC himself created further negative impact when he exposed the decision to the Press rather than allow the investigation—which might well have had the positive impact of clearing his actions—to do its work.

Panel Remark 6:

"Your subsequent decision to forego the usual intake process materialized the lack of independence. Negative consequences are felt directly by the director and indirectly by the organisation as a whole through diminution or loss of confidence in OIOS and in the UN organisation."

Response: My decision, properly taken within my mandate, to directly assign the matter for investigation to the Deputy Director (Vienna), along with arranging for the availability of the information on the case file to be restricted, was made with the sole objective of mitigating the risk that it might be leaked. More specifically, I was concerned that a handful of dysfunctional staff members in the New York office of the Investigation Division of OIOS might conspire to intentionally mishandle the information in the case file they would otherwise be able to access, and that in doing

so they would ignore the impact of their actions on the Director FOTDC, on OIOS, and on the organization.

I still firmly believe it was the right decision under the circumstances. The subsequent leaks of confidential correspondence relating to this case, despite the mitigation steps I took to avoid this, support the validity of my rationale in doing so.

Panel Remark 7:

"The criteria for finding abuse of authority in the UN context are met."

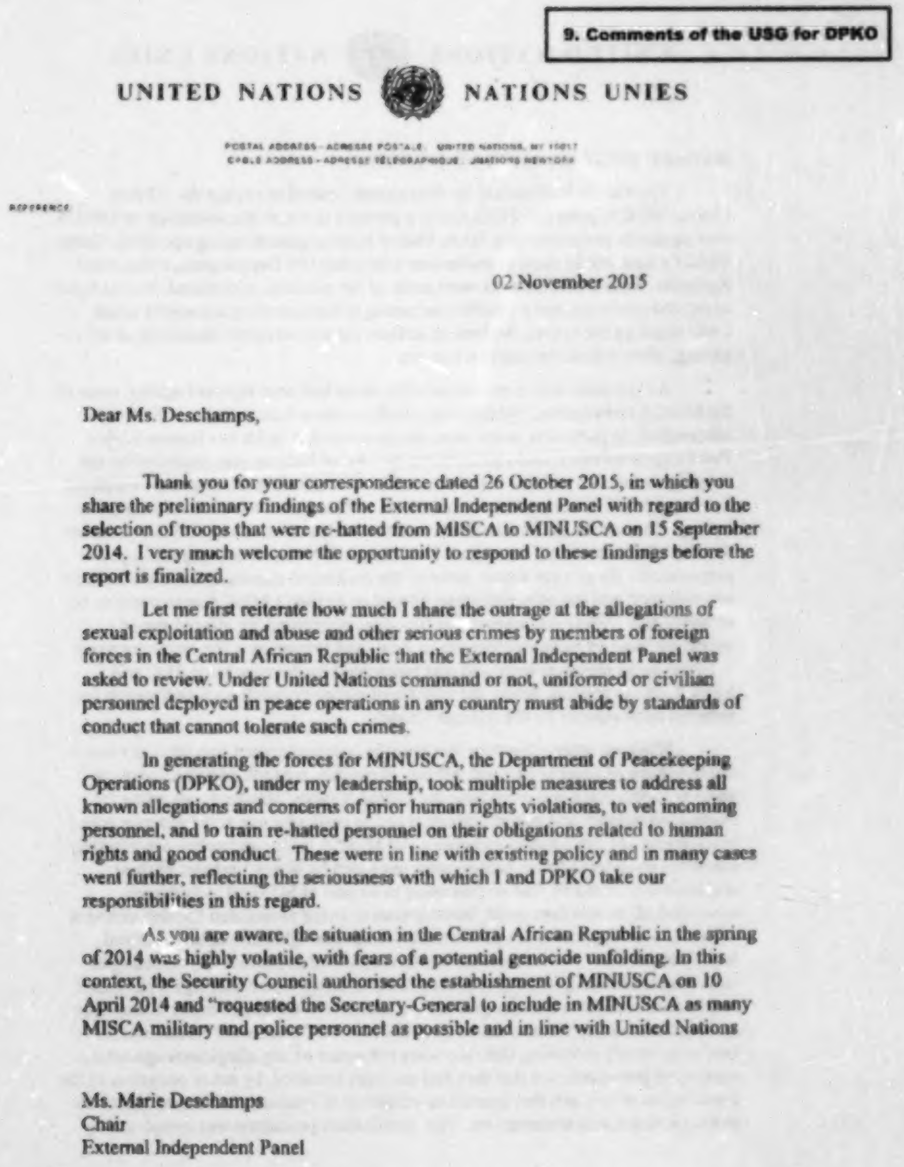
Response: I strongly disagree that I abused my authority by decisions or actions I took in this case; on the contrary, my actions were taken within the context of my legislated authority as Under-Secretary-General of OIOS, and were taken independently and objectively in consideration of relevant and appropriate information, given the seriousness of the allegations and the risks to the Organization.

The exposures affecting the Director FOTDC, the Office of Internal Oversight Services, and the Organization indirectly were created, not by my decisions or actions, but rather by:

- **the inappropriate and public challenge of my legitimate authority by the Director of Investigations; and,**
- **by the actions of the Director FOTDC himself in materializing his threat of taking the matter to the Press rather than cooperating with a lawful investigation that may well have cleared him of the allegations.**

I am including with these comments the following legislative documents referred to herein:

1. **A/RES/48/418 B of the General Assembly dated 12 August 1994, the resolution establishing the Office of Internal Oversight Services;**
2. **Secretary-General's Bulletin ST/SGB/273 dated 7 September 1994, *Establishment of the Office of Internal Oversight Services;***
3. **Secretary-General's Bulletin ST/SGB/2002/7, *Organization of the Office of Internal Oversight Services.***



9. Comments of the USG for DPKO

UNITED NATIONS NATIONS UNIES

POSTAL ADDRESS - ADRESSE POSTALE: UNITED NATIONS, NY 10017
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REFERENCE:

02 November 2015

Dear Ms. Deschamps,

Thank you for your correspondence dated 26 October 2015, in which you share the preliminary findings of the External Independent Panel with regard to the selection of troops that were re-hatted from MISCA to MINUSCA on 15 September 2014. I very much welcome the opportunity to respond to these findings before the report is finalized.

Let me first reiterate how much I share the outrage at the allegations of sexual exploitation and abuse and other serious crimes by members of foreign forces in the Central African Republic that the External Independent Panel was asked to review. Under United Nations command or not, uniformed or civilian personnel deployed in peace operations in any country must abide by standards of conduct that cannot tolerate such crimes.

In generating the forces for MINUSCA, the Department of Peacekeeping Operations (DPKO), under my leadership, took multiple measures to address all known allegations and concerns of prior human rights violations, to vet incoming personnel, and to train re-hatted personnel on their obligations related to human rights and good conduct. These were in line with existing policy and in many cases went further, reflecting the seriousness with which I and DPKO take our responsibilities in this regard.

As you are aware, the situation in the Central African Republic in the spring of 2014 was highly volatile, with fears of a potential genocide unfolding. In this context, the Security Council authorised the establishment of MINUSCA on 10 April 2014 and "requested the Secretary-General to include in MINUSCA as many MISCA military and police personnel as possible and in line with United Nations

Ms. Marie Deschamps
Chair
External Independent Panel

standards" (OP 22 of resolution 2149 (2014)).

The United Nations had by then already started to engage the African Union, MISCA, potential TCCs and key partners to assess the suitability of MISCA contingents to participate in a future United Nations peacekeeping operation. Under DPKO's lead, but in close consultations with other UN Departments, Offices and Agencies, various assessments were made of the political, operational, human rights or reputational risks that a possible re-hatting of these contingents would entail. I will focus on the actions we took to address the human rights dimension of the re-hatting, about which you express concern

As you point out, a number of allegations had been reported against some of the MISCA contingents, highlighting possible serious human rights violations or misconduct. In particular, a risk assessment conducted under our Human Rights Due Diligence Policy, undertaken when the United Nations was requested by the Security Council to provide support to MISCA troops, identified specific incidents involving MISCA troops which would have to be addressed before an eventual re-hatting. Demarches were undertaken with the African Union and MISCA to ensure that the allegations were investigated and that action was taken against alleged perpetrators. As you are aware, some of the concerned contingents were eventually not re-hatted, and the only remaining allegation against a MISCA contingent to be re-hatted that DPKO was aware of at that time, concerned the alleged use of excessive force by military elements in Boali and Bossangoa. The entire company to which those elements belonged was repatriated by the concerned TCC and MISCA, at our request, before the transfer of authority, while an investigation was undertaken in parallel by the African Union.

While no other allegation was specific or substantiated enough to prevent the re-hatting of other police and military personnel, we took additional steps to address further risks and emphasise the United Nations' standards regarding the conduct of military and police personnel and in particular our zero tolerance policy vis-à-vis sexual exploitation and abuse. All MISCA troop- and police contributing countries considered for re-hatting were reminded by Notes Verbales of their responsibility to ensure that no personnel to be part of MINUSCA had been convicted of, or was then under investigation or being prosecuted for, any criminal offence, including violations of international human rights law or international humanitarian law. Governments were also requested to provide any information regarding the investigation(s) or prosecutions in cases where contingent personnel had been investigated for, charged with or prosecuted for any criminal offence but were not convicted. We also asked all MISCA T/PCCs that were considered for re-hatting to certify in writing that they were not aware of any allegations against its contingent personnel, and that they had not been involved, by act or omission, in the commission of any acts that amount to violations of international human rights law or international humanitarian law. This certification procedure was completed for all contingents before the transfer of authority from MISCA to MINUSCA on 15 September 2014.

In addition, we put in place mitigating measures aimed at preventing misconduct of the troops and police personnel that were being re-hatted: in-theatre training was provided by DPKO/DFS, supported by trainers of the Office of the High Commissioner for Human Rights, to prepare contingents that were to be absorbed in MINUSCA. The UN training team conducted seven mission-specific training sessions in Bangui and five others where the troops were located, focusing on key personnel (staff officers, infantry battalion and FPU command staff and warrant officers, trainers) who were then in turn to relay key messages to all deployed uniformed personnel.

While emphasising prevention, we also strengthened MINUSCA's capacity to monitor the conduct of military, police and civilian personnel, and eventually investigate, report and act on any allegations of misconduct concerning MINUSCA personnel, within established procedures. This includes support within MINUSCA for conducting prevention related activities and handling allegations of misconduct, by ensuring referral of those allegations to the appropriate investigation entity, monitoring progress on investigations and reviewing investigation reports to allow for recommendations to be made on required disciplinary or other accountability measures to be taken, when warranted. On several occasions, I personally addressed the civilian and uniformed leadership of MINUSCA to emphasise the importance of the zero tolerance policy vis-à-vis sexual exploitation and abuse, and their personal responsibility in ensuring that it is upheld by all.

I would like to also address more specifically the situation of the contingent of the Democratic Republic of the Congo (DRC), which presented a different concern. While the overall performance of the DRC contingent deployed to the Central African Republic had been deemed appropriate, and no allegation of misconduct had then been received by DPKO, we were aware that the Forces armées de la République démocratique du Congo (FARDC) and the Police Nationale Congolaise (PNC) were listed in reports of the Secretary-General on children and armed conflict and on sexual violence in conflict. In view of these reports, I instructed that all FARDC and PNC personnel deployed to MISCA be vetted before re-hatting, a measure that drew on expert support from OHCHR and MONUSCO and went beyond the policy requirements that existed at that time. Based on the results of this exercise, three FARDC and fourteen PNC elements were subsequently repatriated to the DRC prior to the transfer of authority from MISCA to MINUSCA. In addition, particular efforts were made to train the remaining DRC contingent, with 45 DRC peacekeepers trained as trainers for the continued dissemination of information among other contingent members. These included 24 members of the battalion deployed in Mobaye and 21 members of the FPU deployed in Bangui. I also personally emphasised the importance of ensuring that the DRC military and police personnel to be deployed in MINUSCA abide by the standards of the United Nations with the highest authorities of that country.

I believe the above actions, far from "condoning egregious incidents" or demonstrating "tolerance of sexual abuse and exploitation", reflect on the contrary a systematic endeavour to ensure that the MISCA units that would be re-hatted into MINUSCA would not include personnel against whom serious allegations had been made, as well as our efforts to ensure that the MISCA contingents eventually re-hatted would adhere to United Nations' standards regarding the conduct of military and police personnel and in particular our zero tolerance policy vis-à-vis sexual exploitation and abuse. Clearly, pursuing this objective in MINUSCA and other peacekeeping operations will continue to require systematic and tireless efforts, and there is much more that remains to be done. My commitment in this regard is total. Our goal is not only to implement our zero tolerance policy; it is to arrive to a zero case situation.

I will further note, in concluding, that the deployment of the French forces Sangaris was authorised by the Security Council before MINUSCA was established. I understand the allegations against Sangaris troops also pre-date the transfer of authority from MINUSCA to MISCA; decisions about the re-hatting of certain contingents could not, therefore, have "contributed to the same climate of impunity that ultimately allowed the alleged crimes by the Sangaris forces against the children", as mentioned in your letter.

For the reasons outlined in this letter, I categorically reject the assertion that there was "tolerance" of sexual abuse and exploitation as well as human rights violations and other serious crimes, or that decisions taken during the re-hatting and force generation exercise effectively condoned such behaviour or contributed to a climate of impunity.

I welcome the opportunity to provide a more detailed response should you have specific findings that require further clarification.

Yours sincerely,

Hervé Ladsous
Under-Secretary-General
for Peacekeeping Operations

10. Comments of Senior Officer EOSG

Comments / Response Re: Section on EOSG Senior Officer

As articulated in the ToR of the CAR Independent Review Panel, this staff member is exercising the opportunity to submit comments to be annexed to the report following his testimony on a particular item in this report. Specifically, this staff member believes that some of the information in the section on the EOSG Senior Officer is factually incorrect. Moreover, he believes that the first paragraph in the three-paragraph section excludes and/or omits a number of key facts, contextual considerations, and decision-making choices that came into play on 8 August 2014 around the way communications were handled between, and inside, the relevant Organizational entities. Thus, characterizing the staff member's actions around the conveyance of an important message as "misleading" – while failing to reflect in the report the actions, judgement calls and decisions taken by him (as well as the environment which impacted the ability of both the staff member and the ODSG to take up the matter immediately) – is unfortunate. Therefore, the staff member requests that this entire text be included in the annex.

In sum, on 8 August 2014 – the day when the Deputy High Commissioner's Office (DHCO) called the EOSG on this particular issue, the EOSG was simultaneously dealing with at least three immediate items of concern: the situation of the Yazidis on Mt. Sinjar; the failure of the extension of the Gaza ceasefire and the diplomatic ripple effects; and the humanitarian stand-off in eastern Ukraine. On this particular day, the entire Unit responsible for supporting the Senior Managers in their work around such issues was away and had only one core professional staff member (out of six) covering the files and related responsibilities for the Middle East, Europe, Asia-Pacific, Africa and Americas regions. In addition, the DSG was, I believe, the sole Senior Manager in the EOSG that day as the SG and the CdC were away.

The DHCO called the Senior Officer (SO) at some point before 11:52 am, EST (this was the time stamp on the follow-up email in which the staff member simply included the French Note Verbal). As for the telephone call itself, the SO does not remember it clearly; but it was brief and general in nature. The SO is sure of the latter, because it was just ahead of a very busy noon briefing period and the former was juggling multiple deadline items related to the briefing itself. The main thrust of the telephone call, however, was that sensitive information was passed to the French and the SO was asked that this be conveyed to the DSG. Even though the DSG's schedule was already full that day (and was then further impacted by the evolving developments described above) the SO would have replied that, yes he would aim to notify the DSG about this particular issue. The SO recalls that he tried, on a number of occasions to find an opening/opportunity in order to pass on the message to the ODSG but it did not materialize due to the immediate crises items which dominated the entire day. The SO also recalled that at some point toward the evening, the staff member from the DHCO phoned to follow up on the SO's efforts. The SO would have noted again that yes, he'd inform the DSG.

The text in the report states that the Senior Officer "later confirmed in writing that he had" [informed the DSG about the message]. This is incorrect: In an email response to the DHCO staff member, the Senior Officer ONLY acknowledged the receipt of the French Note Verbal by email. The SO also immediately forwarded the email thread between himself and the DHCO staff member to the primary CAR file holder in the Unit and the other relevant

persons in the Unit. The SO then verbally briefed the primary file holder on the exchange he had with the DHCO staff member upon the former's return to the office.

Subsequently, in deciding on the course of actions to be taken next, the SO considered the following points: The nature of the issue was extremely serious [the SO had deep experience around the issue of crimes of sexual violence from previous work in the field]. However, given that the message from DHCO was about the transmittal of a report about crimes that were committed in the past, the SO made a determination that: passing on a general message to the DSG that same hectic day, or forwarding this issue for the (more informed) lead CAR file holder to brief the ODSG after necessary follow-up, would not have an impact on the victims on the ground.

The Unit of the SO has a particular obligation to conduct necessary due diligence around any communication or issue – particularly a highly sensitive one – before it is submitted to the EOSG's Senior Management. Thus, the SO made a decision that a FULLY informed briefing on this serious and sensitive issue from the lead CAR file holder would be the more responsible way for the ODSG to be notified. In tandem, the SO determined that additional points of clarification needed to be made around the nature of the ODHC's communication to the EOSG: As this was an extremely serious issue being flagged to the DSG, why wasn't his Office contacted directly? OHCHR Geneva, and especially the ODHC staff member had done this many times before and it seemed odd that such a matter was only verbally flagged in an informal "back channel" manner to a Unit once removed from the ODSG. In addition, the OHCHR office in NY could have also been used to inform the ODSG in a more detailed and direct way; but this avenue was not utilized either. Taken together, the SO surmised that there were key details and important contextual elements that needed to be followed-up, filled in and clarified, preferably by a staff member who was well versed around the challenges related to the CAR file. Once again, the SO concluded that the primary file holder – who had an extremely close working relationship with the ODHC staff member – would be best placed to take up the matter and then inform the ODSG. Given this close working relationship, I assumed – incorrectly possibly – that there would be immediate follow up between them. One shortcoming on my end was that I could have contacted the ODCH staff member the next day to let her know that the issue would be followed up by the Unit upon the imminent return of the CAR file lead. Given all this, the statement in the report noting that the SO "explained that if the message was so important, it should have been dealt with in subsequent communications" is misleading and inaccurate. The SO did not state this; rather the above paras describe the key considerations made by the SO about the way to handle the eventual transmittal of the message to the ODSG.

The time-sensitive nature of the responsibilities related to the immediate crises of 8 August subsumed the entire bandwidth of one SO and the ODSG. In short, the opportunity to convey the ODHC message (which would have required a moment for an appropriate level of attention) did not materialize on 08 August 2014. Therefore, the subsequent actions described above were taken instead.

Annex IV

List of abbreviations

BINUCA	United Nations Integrated Peacebuilding Office in the Central African Republic
CAR	Central African Republic
DPKO	Department of Peacekeeping Operations
EOSG	Executive Office of the Secretary-General
FOTCD	Field Operations and Technical Cooperation Division
HRJS	Human Rights and Justice Section of MINUSCA
HRO	Human Rights Officer
IDP	Internally displaced person
Joint Policy	Policy on Human Rights in United Nations Peace Operations and Political Missions
MINUSCA	United Nations Multidimensional Integration Stabilization Mission in the Central African Republic
MISCA	African-led International Support Mission in the Central African Republic
MRM	Monitoring and reporting mechanism
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
OIOS	Office of Internal Oversight Services
OLA	Office of Legal Affairs
SEA	Sexual exploitation and abuse
SRSG	Special Representative of the Secretary-General
SRSG CAAC	Special Representative of the Secretary-General for Children and Armed Conflict
TCC	Troop-contributing country
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USG	Under-Secretary-General